

ALLAHABAD HIGH COURT

Parasram Shukul

Vs.

Bindeshari Pandey

Civil Revn. No. 632 of 1948

(Bind Basni Prasad and Mukerji, JJ.)

11.08.1952

JUDGMENT

Bind Basni Prasad, J.

1. This is a mortgagor's petition in revision from the judgment, dated 15th May 1948, passed by the learned District Judge of Gorakhpur upholding the judgment dated 15th April 1946, given by the learned Sub-divisional Officer of Deoria. It arises out of proceedings under Section 12, U.P. Agriculturists' Relief Act. The relevant facts are as follows : On Jeth Sudi 15, 1881 A.D. a usufructuary mortgage in respect of an agricultural plot was made by the applicant's ancestors to the opposite parties' predecessors. On 1st March 1944, that is to say, more than sixty years after the date of the mortgage, the application for redemption was filed. The applicant contended that in the year 1911, there was an acknowledgment of the mortgage and so the case was saved from the operation of the bar of limitation. It was further contended that according to the provisions of Section 9, U.P. Debt Redemption Act, 1940, there was a fresh start of limitation when that Act came into force, viz., on 1st January 1941. The trial Court held that the case was barred by limitation and learned District Judge upheld that order. The mortgagor, therefore, comes in revision.

2. The first question is whether there was an acknowledgment within the meaning of Section 19, Limitation Act. It appears that in 1911 there was a partition suit among the members of the mortgagee family, being suit No.403 of 1911 in the Court of the Munsif of Deoria. In the course of that partition suit a compromise was arrived at and inter alia there was the following condition in it :

"Whatever land is in possession of the plaintiffs under the mortgage deed dated Jeth Sudi 15, 1288 Fasli executed by Gur Dutt, father of Jhinguri and Dubri, mortgagors, shall continue to remain in possession of the plaintiffs."

The contention on behalf of the petitioner is that this amounts to an acknowledgment under Section 19, Limitation Act.

That section provides :

"Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed."

3. Explanation I provides, inter alia, that it is not necessary that the acknowledgment should be addressed to the person who seeks to take benefit of it under Section 19. Nevertheless, an acknowledgment of liability necessarily implies a conscious acknowledgment of liability. Hence in considering whether certain words amount to an acknowledgment of liability it must be seen whether at the time of writing them the writer had in his mind the question as to his liability or whether he was thinking of and referring to some other matter. If the mention of the mortgaged property in the deed of compromise was only for the purpose of description of the property, as we think it was, and not with the idea of acknowledging the liability of redemption, then in our view it would not amount to an acknowledgment within the meaning of that word as used in Section 19, Limitation Act.

4. There are some decided cases bearing on this point : In *Khiali Ram v. Taik Ram*¹, a Dakhalnama contained a description of the property purchased by the defendants' predecessor and his signature thereon and in that description there was a reference to the mortgage. It was held that the Dakhalnama did not amount to an acknowledgment of liability within the meaning of Section 19, Limitation Act and the mention of the mortgage was merely for the purpose of description of the property. In *Mt. Sham Devi v. Bhagwant Dayal*², there was a sale deed in which the property purchased was described as subject to a mortgage and only the mortgagee rights were sold. It was held that all that the vendor admitted was that he came into possession of the property on the foot of a mortgage. No question arose in his mind as to whether the mortgage subsisted or had become time barred. The statement in the sale deed by itself did not signify to the mind of the person making it or to anybody else that the maker of the statement thought or believed that he was liable to be redeemed at the date of making the statement. Such statement, therefore, was held not to be an acknowledgment within Section 19. In *Nait Ram v. Roshan Lal*³, there was an application for sale of a mortgaged property under Order 21, Rule 66, Civil Procedure Code and in support of it there was an affidavit to the effect that upon an examination of the registration office the applicant found that there was a mortgage deed of the property of which the sale proclamation was to issue. It was held that this statement did not amount to an acknowledgment of liability affixed to the property or personally to the applicant within the meaning of Section 19.

5. Learned counsel for the applicant has invited our attention to the Full Bench case reported in *Daia Chand v. Sarfraz*⁴, That was a case in which the defendants had attested as correct the record of rights prepared at a settlement with them of an estate in which they were described as mortgagees of the estate, but which did not mention the name of the mortgagor. It was held by the majority of the Judges that there was an acknowledgment of the mortgagor's right to redeem within the meaning of Article

¹ AIR 1916 All 201

³ AIR 1932 All 62

² AIR 1925 All 353

⁴ 1 All 117(FB)

148, Sch.II of Act 9 of 1871. The facts of that case are distinguishable from those of the present one. At the settlement the nature of rights is expressly brought into issue. Moreover the language of Section 20 of Act 9 of 1871 was quite different. We are of opinion that the principle laid down in this Full Bench case is not applicable to the present case.

6. For the reasons given above and on the authorities cited above, we hold that the recital in the deed of compromise of 1911 does not amount to an acknowledgment within the meaning of Section 19, Limitation Act of 1903.

7. The second point argued is that with the commencement of the U.P. Debt Redemption Act, 1940, a fresh start of limitation was given from 1-1-1941, when the Act came into force. Reliance is placed upon *Ram Prasad v. Bishambhar Singh*⁵, The view taken in that case was that Article 148, Limitation Act, 1908, provides two types of suits : (1) for redemption of a mortgage and (2) for the recovery of possession from a mortgagee of immovable property. For the redemption the time from which the period of limitation begins to run is when the right to redeem accrues and for the recovery of possession the time begins to run from the date when the right to recover possession accrues. In the application under Section 12, Agriculturists' Relief Act the relief claimed was for the recovery of possession only. In express terms there was no claim for the redemption of the mortgage. In para.4 of the plaint it was alleged that the entire mortgage money had been paid up from the usufruct of the property. The right to recover possession of the property in the present case, therefore, accrued when the entire mortgage money became paid up from the usufruct of the property. Prior to the U.P. Debt Redemption Act according to the law, as it then stood, the mortgage money was not satisfied. The term in the mortgage deed was that the usufruct of the property will go towards the payment of the interest. According to this term the usufruct could not be applied towards the repayment of principal. When the U.P. Agriculturists' Relief Act, 1934 was passed statutory rates of interest were provided and they were to prevail against the contractual rates, but those statutory rates according to Section 30 of that Act were to be applied only from 1-1-1930. Prior to that date the provisions of the Usurious Loans Act, 1918, were applicable; but prior to 1918 the contractual rates were to prevail. It is not shown to us that according to the provisions of the U.P. Agriculturists' Relief Act the mortgage money in the present case became paid up before the commencement of the U.P. Debt Redemption Act. It was in Section 9, U.P. Debt Redemption Act that provision was made that interest on a secured debt shall not exceed 4½ per cent. per annum simple and in the determination of the amount due

under a loan not only the sums actually paid by or on behalf of the debtor but also the net profits realized by the mortgagee or which, with the exercise of ordinary diligence, might have been realized by him shall be taken into consideration. The position in the present case is that the mortgage money was satisfied only when the accounts were taken in accordance with Section 9, U.P. Debt Redemption Act, 1940. The earliest date on which this section could be applicable was 1-1-1941. Hence it must be taken that on that date the right accrued to the mortgagors in the present case to recover possession of the mortgaged property without the payment of the mortgage money. That being so, limitation for a suit for the recovery of possession under Article 148 began to run from 1-1-1941. In this view of the case the present suit is within time.

⁵1946 All LJ 175

8. It has been argued that the present case is not for recovery of possession as contemplated by Section 62, Transfer of Property Act, 1882, but is a case pure and simple for the redemption of a mortgage under Section 60 of that Act. This is a suit neither under Section 60 nor Section 62, Transfer of Property Act. It is an application under Section 12, U.P. Agriculturists' Relief Act, 1934. A close examination of this section leads us to the conclusion that it embraces within its scope the nature of suits both under Sections 60 and 62, Transfer of Property Act. It starts with the opening words "notwithstanding anything contained in Section 83, Transfer of Property Act, 1882 or any contract to the contrary" A perusal of that section and the succeeding ones in chap. III shows that Section 12 is an elaboration of Section 83, Transfer of Property Act. Section 83 is wide enough to cover both the types of mortgages - simple and usufructuary, for the last paragraph of that section provides for the delivery of possession to the mortgagee. Section 60 is a general section declaring the right of redemption of the mortgagors. It contemplates also usufructuary mortgages for clause (b) of that section provides that a mortgagor may require the mortgagee in possession to deliver possession of the mortgaged property to him at any time after the principal money has become due and after the mortgage money has been paid or tendered. To a certain extent Sections 60 and 62 overlap with each other. Compare clause (b) of Section 62 with Section 60 of the Act. But to a certain extent Section 62 makes provision for a contingency for which no provision exists in Section 60. Section 60 contemplates redemption after "payment or tender" of the mortgage money. It does not contemplate a case where the mortgage money has been paid off from the usufruct of the mortgage property. Clause (1) of Section 62 makes provision for this, for it provides that a mortgagor may bring a suit for recovery of possession of the mortgaged property where the mortgagee is authorized to pay himself the mortgage money from the rents and profits of the property and the mortgage money has been so paid up. Section 60 is a general provision giving the right of redemption to mortgagors in general. Section 62 deals specifically with usufructary mortgages.

9. It may be argued that from Section 13, ITP Agriculturists' Relief Act it is apparent that the deposit of the mortgage money is essential for an application under Section 12. In *Iqan Husain, v. Babu Ram*⁶, it was held that the deposit of money is not essential for an application under Section 12 where it is alleged that the mortgage money had been paid up from the rents and profits of the property.

10. The conclusion at which we reach is that in an application under Section 12, U.P. Agriculturists' Relief Act, 1934, it is open to a usufructuary mortgagor to ask for the recovery of possession of the mortgaged property without the payment of the mortgage money if the mortgage money has been paid up from the usufruct of the property and the period of limitation for such an application is sixty years from the date when the mortgage money was so satisfied and the right to recover possession accrued. This is our interpretation of Article 148, Limitation Act.

11. The result is that the revision succeeds and it is hereby allowed. Parties will bear their own costs throughout. Possession will be delivered by the mortgagee in Jeth, 1953.

Revision allowed.

⁶1938 All LJ 1115