

TUNDAL (DEAD) BY L.RS. AND ORS.

A

v.

MUNSHI AND ORS.

AUGUST 18, 2006

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

B

Punjab Redemption of Mortgages Act, 1913—Sections 4 and 12—Suit for redemption of mortgage property—Dismissal of, by Collector—Thereafter, another suit filed beyond one year, decreed in favour of mortgagor—Mortgagee's case that suit dismissed on merits by Collector, as such instant suit barred by limitation—On appeal held: Findings of Collector become conclusive between mortgagee and mortgagor if no suit is filed within one year and order cannot be assailed—Section 12 prohibits substance of order and not the form—Substance of order determines the application of period of limitation—Substance of order by Collector reveals that order not recorded on merits—Thus, it cannot be said that suit was barred by limitation—Orders of courts below not perverse or illegal—Limitation Act, 1963.

C

D

Owner of the agricultural land mortgaged the land with possession with the original appellant-mortgagee for consideration of certain amount. The owner-mortgagor died and her heirs, respondent-mortgagors filed suit for redemption under section 4 of the Punjab Redemption of Mortgages Act, 1930. Collector dismissed the suit since the parties did not place sufficient evidence on record. Two of the respondents who acquired rights in the suit land, filed suit for redemption after one year. Trial Court decreed the suit subject to payment to appellant no. 1. Appellant then filed an appeal which was dismissed. Regular Second Appeals were also dismissed. Hence, the present appeals.

E

F

Appellant-mortgagees contended that the order of the Collector dismissing the suit filed under section 4 was based on merits after scrutinizing the entire evidence placed on record, as such the suit was barred by limitation since it was not filed within one year of the dismissal of the suit.

G

Respondent-mortgagors contended that both the First Appellate Court and High Court held on the assessment of the entire material on record that the Collector has not recorded any findings on the merits of the case.

H

A Dismissing the appeals, the Court

HELD: 1.1. If no suit was filed within a period of one year, the findings of the Collector become conclusive between the mortgagee and the mortgagor and it is not open to assail the order of the Collector after one year in a suit of foreclosure or sale by the mortgagee. Section 12 of the Punjab Redemption of Mortgagors Act, 1930 prohibits the substance of the order and not the form in which the order is couched by the Collector. Even if by the order, the petition is dismissed not the form of the order but the substance will determine the application of the period of limitation prescribed by the Limitation Act.

[627-D-F]

C 1.2. The net substance of the order of the Collector reveals that the said order was not recorded on merits. Thus, it cannot be said that the suit was barred by limitation as the order of the Collector was not challenged by the respondents within one year. Therefore, there is no perversity or illegality in the judgment and decree of the courts below warranting interference.

[627-F]

D *Harbans Singh and Anr. v. Guran Ditta Singh and Anr.*, [1991] 2 SCC 523 and *Shivlal & Ors. v. Sultan & Ors.*, [1969] 2 SCC 883, relied on.

CIVIL APPELLATE JURISDICITON : Civil Appeal Nos. 14185-14188 of 1996.

E From the Judgment and Order dated 5.1.1995 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. Nos. 724/1985, 1740/1990, 725/1985 and 307/1991.

Madhu Tewatia and Ranbir Singh Yadav for the Appellants.

F Arvind Kumar, Poonam Prasad and Chander Shekhar for the Respondents.

The Judgment of the Court was delivered by

G H **LOKESHWAR SINGH PANTA, J.** These appeals are directed against the common judgment and decree dated 5th January, 1995 passed by the learned Single Judge of the High Court of Punjab and Haryana dismissing Regular Second Appeal Nos. 724/1985, 1740/1990, 725/1985 and 307/1991 filed by the appellants-defendants against the judgment and decree of the Additional District Judge (II), Faridabad. The Additional District Judge has dismissed the Civil Appeal No. 101 of 1983 preferred by original defendant-appellant Tundal against the judgment dated 7th June, 1983 of Sub-Judge

First Class, Palwal, decreeing the Civil Suit No. 232 of 1980 instituted by the plaintiffs-respondents for possession of the land by way of redemption. We have taken up and heard these appeals together as they involve same and identical issues and they shall stand disposed of by this common judgment.

Brief facts giving rise to the filing of the appeals are that one Smt. Mohori, widow of Dan Sahai, was the owner in possession of the agricultural land comprising Khasra Nos. 871, 872, 873, 900, 901, 903 and 907 of Khatoni No. 21 and Khasra No. 576 of Khatoni No. 22, Khewat No. 7 admeasuring 14 bighas, 9 biswas situated in village Raidaska, Tehsil Palwal, District Faridabad. During consolidation proceedings, lands measuring 45 kanals 8 marlas was allotted to Smt. Mohori in lieu of old khasra numbers which was mortgaged by Smt. Mohori with possession with original appellant-defendant No. 1 Tundal (now dead), *vide* registered Mortgage Deed dated 18th September, 1951 registered on 25th September, 1951 for an ostensible consideration of Rs. 2,200/- which amount was reduced to Rs. 825/- in the decree of Civil Court and pursuant to the said decree mutation of the land was sanctioned on 2nd April, 1957.

Smt. Mohori died in the year 1967 and the mutation of the inheritance was sanctioned in favour of the heirs mentioned in the pedigree table given in paragraph 5 of the plaint. Hukam Singh-original plaintiff No. 6 and Dal Chand-plaintiff No. 7, respondents herein, have acquired rights in the suit land on the basis of decree of Civil Court in Suit No. 200 dated 30th March, 1974 in respect of the shares of Khillu, Rumali - widow, Ramvati - daughter and Pitamber son of Giasi. After the acquisition rights, Khillu was left with 1/6th share whereas Rumali, Pitamber, Ramvati got 1/6th share each. The mutation of their shares was entered in the Revenue Record, which was sanctioned on 12th October, 1974 by the competent authority.

The plaintiffs 6 and 7 filed Civil Suit No. 565/1974 for the redemption of the suit land, which came to be dismissed on 13th December, 1976 by the Revenue Court. The appellant No. 1-defendant No. 1 in the present civil suit, was reluctant to release the suit land after receipt of the amount of mortgage, so the plaintiffs-respondents instituted the present suit impleading defendant Nos. 2-9 as proforma defendants-appellants herein as they were not available at the time of filing of the earlier suit.

The suit was resisted and contested by original defendant-appellant Tundal (now dead). The other defendants-appellants 3 to 5 and 7 to 10 in their written statement have admitted the claim of the plaintiffs-respondents and

A also pleaded that they are entitled to get their respective shares in the suit land after redemption. The original defendant-Tundal raised preliminary objections *inter alia* that the mortgaged amount was Rs. 2,200/- and not Rs. 825/-; the plaintiffs or defendant Nos. 2 to 9 are not legal heirs of Smt. Mohori and as the plaintiffs' suit under Section 4 of the Punjab Redemption of Mortgages Act, 1913 (for short "the Act") was dismissed by the Court therefore, the right of redemption of the plaintiffs had extinguished and, the suit of the plaintiffs was liable to be dismissed. The main defence pleaded by the defendant No. 1 was that the suit was time barred as the order of the Collector under the Act was recorded on 30th July, 1974 and that the present suit was filed after the stipulated period of one year. On the pleadings of the parties, the Trial Court framed as many as ten issues, which were reproduced by the learned Single Judge in his judgment and we do not think it necessary to reproduce them again for unnecessarily burdening the record. The learned Trial Court passed preliminary decree in favour of the plaintiffs for redemption of the suit land subject to the condition of the payment of Rs. 825/- to defendant appellant No. 1 on or before 28th July, 1983.

D Being aggrieved against the judgment and decree of the Trial Court, defendant No. 1 preferred appeal which came to be dismissed by the First Appellate Court confirming the judgment and decree of the Trial Court. Defendants-appellants filed four Regular Second Appeals before the High Court, which came to be dismissed by a single judgment and decree impugned in these appeals.

E We have heard Ms. Madhu Tewatia, learned counsel for the appellants and Mr. Arvind Kumar, learned counsel for the respondents, who have taken us through the relevant material on record. Ms. Madhu Tewatia, learned counsel for the appellants submitted that the order of the Collector dated 13th July 1974 dismissing the suit of the plaintiffs filed under Section 4 of the Act was based on merits after scrutiny of the entire evidence placed on record by both the parties. As such, the present suit was barred by limitation, as the suit was not filed within one year of the dismissal of the petition by the Collector for redemption of the mortgage land.

G In opposition to the contention of the learned counsel for the appellants, the learned counsel for the respondents-plaintiffs urged that since all the three courts below have recorded concurrent findings of fact on the legal issues as well as the factual scenario of the controversy, therefore, this Court in exercise of its jurisdiction under Article 136 of the Constitution of India will

H

not be obliged to interfere with the well-reasoned judgments of the courts below. The First Appellate Court and the High Court have categorically held on the assessment of the entire material on record that the Collector in exercise of the jurisdiction under the Act has not recorded any finding on the merits of the case. A

We have given our thoughtful consideration to the respective contentions of the learned counsel for the parties and examined the judgments of the courts below. Order dated 30th July 1974 recorded by the Collector in the redemption proceedings is placed on record as Exhibit P8. It is not in dispute that in the redemption proceedings filed by Khillu and others under Section 4 of the Act, parties went to trial and led their respective evidence in respect of their claims and counter claims. The Collector in his order had noticed the various respective contentions raised by the parties in respect to the notified shares of the plaintiffs' rights, if any, and also what will be the effect of non-impleadment of some of the persons who have got rights in the property in dispute and further whether the amount of mortgage was Rs. 2,200/- as stated by the appellants-defendants or Rs. 825/- as pleaded by the respondents-plaintiffs. After noticing their contentions/pleas raised by the parties, the Collector came to the conclusion that since sufficient evidence had not been laid by the parties, no finding could be recorded on the merits of the case. Accordingly, the Collector came to the conclusion that the petition for redemption of mortgage of the property in the present form would not succeed and so the same was dismissed. B C D E

To appreciate the contentions of the learned counsel for the parties, we propose to refer to the relevant provisions of the Act. The scheme of the Act envisages that if petition for redemption of the mortgage of the property is presented before the Collector being a competent authority he shall deal with the matter judiciously. Under Section 4 of the Act, the petitioner has to state the particulars of the land mortgaged, the amount of mortgage and the factum of the deposit of the mortgaged amount with the Collector. Section 5 provides that as and when the petitioner has been duly presented and the deposit has been made, the Collector has to issue summons to the mortgagees to appear on a date to be specified therein. Under Section 8, the Collector has to enquire from the mortgagee whether he admits that the petitioner is entitled and whether he is willing to accept the sum in deposit in full payment of the mortgage debt and in case the mortgagee is in possession whether he is willing to surrender possession of the mortgaged property. If the mortgagee replies in the affirmative, the Collector is to pass the order as laid down in F G H

A Section 6(a), (b), (c) and (d) of the Act. In case, the mortgagee admits the petitioner's title to redeem but demands payment of sum larger than pleaded by the petitioner, the Collector has to enquire from the petitioner whether he is willing to pay larger amount and in case the petitioner answers in affirmative, the Collector shall fix a period not exceeding 30 days within which the

B petitioner is to deposit the difference and in case the petitioner makes such a difference good, the Collector is to make order as laid down in Section 6(a), (b), (c) and (d) of the Act. In default of deposit of such amount within the prescribed time, the Collector is to dismiss the petition. In case the mortgagee raises objection on any ground other than the amount of deposit or if the petitioner is not willing to pay the sum demanded by the mortgagee, the

C Collector can either dismiss the petition or make a summary inquiry regarding the objection raised by the mortgagee as contemplated under Section 9 of the Act. Thus, Section 9 of the Act envisages an inquiry by the Collector with regard to the objection raised by the mortgagee. As noticed above, in the present case, the net substance of the order of the Collector dated 30th July, 1974 reveals that the said order was not recorded on merits. Thus, the

D contention of the learned counsel for the appellant that the suit was barred by limitation as the order of the Collector was not challenged by the plaintiffs within one year does not merit acceptance. Ms. Madhu Tewatia, learned counsel for the appellants, has made reference to paragraph 6 of the judgment of this Court in *Harbans Singh and Anr. v. Guran Ditta Singh and Anr.*,

E [1991] 2 SCC 523, which reads as under:-

F “6. It is clear that an order passed by the Collector under Sections 6 to 11 is only conclusive for what was decided therein and if the adjudication made by the Collector in summary proceedings are sought to be reopened, certainly, unless the order is got over, either by the mortgagee or by the mortgagor, or any person claiming right, title or interest through them being an aggrieved person within the meaning of Section 12, the order of the Collector binds the parties or the persons claiming right, title or interest from the parties. Take for instance, there is a dispute as in the present case about the mortgage money before the Collector. Kala Singh disputed the money secured of hypothecation but had compromised and agreed to pay the amount mentioned in the mortgage bond, namely, Rs. 850-Rs. 10 in each of the mortgages disputed but in the suit filed within one year he reiterated his original stand. Had the same stand been taken by the respondents disputing the mortgage money, certainly it would not be open to the respondents as successor in interest of the mortgagor to contend that

G

H

the money advanced under the mortgage was not Rs. 850, but something less. That is not the case in the present suit. They agreed to pay Rs. 850 as decided by the Collector and sought redemption in the civil suit. Thereby they are not seeking to set aside the order of the Collector, but they are seeking redemption of the mortgage. Take another instance where the mortgagor disputed the execution or validity of the mortgage bond itself and the finding was recorded against the mortgagee, i.e. the mortgage bond was not either executed or is void for being vitiated by fraud, coercion or undue influence, etc. The mortgagor successfully avoided the mortgage by a specific order passed by the Collector under the relevant provisions of the Act. If no suit was filed within a period of one year, the findings of the Collector become conclusive between the mortgagee and the mortgagor and it is not open to assail the order of the Collector after one year in a suit of foreclosure or sale by the mortgagee. Therefore, what was prohibited by Section 12 is only the substance of the order and not the form.”

The above extracted paragraph of the judgment lays down that if no suit was filed within a period of one year, the findings of the Collector become conclusive between the mortgagee and the mortgagor and it is not open to assail the order of the Collector after one year in a suit of foreclosure or sale by the mortgagee. Section 12 of the Act prohibits the substance of the order and not the form in which the order is couched by the Collector. Even if by the order, the petition is dismissed not the form of the order but the substance will determine the application of the period of limitation prescribed by the Limitation Act. In support of our view, we are fortified by the decision of this Court in *Shivlal & Ors. v. Sultan & Ors.*, [1969] 2 SCC 883. In the facts and circumstances of the case and in the light of the above-settled proposition of law, we do not find any perversity or illegality in the judgment and decree of the courts below warranting interference in these appeals.

In result, for the foregoing reasons, the appeals are devoid of merits and are dismissed accordingly. Parties are left to bear their own costs.