

Joginder Singh v. The State of Punjab and others (S. S. Kang, J.)

double jeopardy. However, in that case the service rules permitted a second enquiry. This contention was repelled by the Court.

(6) In the result, I allow this petition and quash orders initiating a second departmental enquiry against the petitioner. The rest of the order shall remain operative. I also quash the enquiry proceedings. It is, however, made clear that this judgment will have no effect on the enquiry proceeding against Head Constables Jaswant Singh and Banwari Lal.

N. K. S.

Before S. P. Goyal, J.

SHAMBHU DAYAL,—Appellant.

versus

SMT. TARAWANTI AND OTHERS,—Respondents.

Regular Second Appeal No. 867 of 1975.

September 23, 1983.

Limitation Act (IX of 1908)—Article 148—Redemption of mortgaged property—Stipulation in the mortgage deed enabling redemption within ten years on payment of additional amount—Option to redeem not exercised within ten years—Right to redeem—Whether accrues after the expiry of ten years—Suit for redemption filed after 60 years but before expiry of 70 years from the date of mortgage—Such suit—Whether within limitation.

Held, that the stipulation in the mortgage-deed permitting redemption within ten years on payment of additional amount was only an enabling provision meant for the benefit of the mortgagor. It was open to him to redeem the property within the period of ten years if he had so desired on payment of additional amount. In case he did not exercise that option the condition of the bar of redemption for ten years was in full operation and the right to redeem was to accrue to the mortgagor only after the expiry of ten years. The limitation in a suit for redemption of the mortgaged property would, therefore, commence only after the expiry of the period of ten years fixed in the agreement and if the suit is filed after 60 years but before the expiry of 70 years from the date of mortgage it would be well within time.

(Para 2)

Regular Second Appeal from the decree of the Court of Shri K. L. Wasan, Additional District Judge, Ambala (Camp at Gurgaon), dated the 25th day of March, 1975, affirming that of Shri P. P. Chhabra, Sub Judge II Class, Ballabgarh, dated the 11th day of June, 1974 dismissing the suit of the plaintiff and leaving the parties to bear their own costs. The cross-objections were also dismissed.

M. S. Jain, Advocate, for the Appellants.

Arun Jain, Advocate with Kamaljit Bakshi, Advocate, for Respondent.

JUDGMENT

S. P. Goyal, J.—

(1) In this second appeal against the judgment and decree of the learned Additional District Judge, Ambala, the sole and the vital point which needs determination is as to whether the suit for redemption is barred by time.

(2) For the determination of the said question, it is not necessary to refer in detail to the pleadings of the parties and suffice it would to notice only the following facts which are necessary for that purpose. The property in dispute was mortgaged by the predecessor-in-interest of the appellant with the predecessor-in-interest of respondent No. 1 for consideration of Rs. 900 through mortgage deed, Exhibit P-2, dated December 18, 1905. This suit for its redemption was filed on December 22, 1970, after the expiry of 60 years, that is, the period of limitation prescribed. The suit was, however, claimed to be within limitation on the basis of condition No. 6, of the mortgage deed which reads as under :—

“SHARAT FAKUL REHAN BA HAD MIAD DAS SALL KE KARAR PAI HAI. ZAN KUL ZAR PATTI, ZAR HAHAN WA LAGGA WA SOOD KE YAKMUSHT MURATAHANAN KO DE DENG. DUKAN MARHUNA FAKUL REHAN KAR DENGE AGAR AND-ROON MIYAD MURKARAH GUJAST KARENGA TWO BAJAI MUBLIGH 900 KE MUBLIGH 990 ZAR REHAN WA SOOD WA LAAGAT KE JO WAJIB TALAB HOGA? DENDAR HONGE.”

Both the courts below have taken the view that as it was open to the mortgagor to redeem the property at any time after the date

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of the mortgage on payment of the mortgage amount together with another Rs. 90 the right to redeem commenced from the date of the mortgage itself. This view, however, cannot be sustained in law. The said clause was only an enabling provision meant for the benefit of the mortgagor. It was open to him to redeem the property within a period of ten years if he had so desired on payment of additional amount of Rs. 90. In case he did not exercise that option the condition of the bar of redemption for 10 years was in full operation and the right to redeem was to accrue to the mortgagor only after the expiry of 10 years. Though there is no direct authority covering the present situation but some observations of the Privy Council in *Bakhtawar Begam v. Husaini Khanum and another*, (1), fully support my view. In that case, the mortgagor executed a mortgage by way of conditional sale in respect of 12 villages. A contemporaneous agreement was made by the mortgagee with the mortgagor that the latter may at any time within a period of 9 years claim back the property on payment of the amount of consideration. Allahabad High Court while interpreting this clause held that the debt remained outstanding for a period of 9 years and the right to redeem only accrued at the expiry of that period. The suit was consequently held to be within limitation. The judgment of the High Court holding the suit to be within limitation was reversed on another consideration but so far as the interpretation of the said clause was concerned, their Lordships of the Privy Council observed thus :—

“Ordinarily, and in the absence of a special condition entitling the mortgagor to redeem during the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period. But there is nothing in law to prevent the parties from making a provision that the mortgagor may discharge the debt within the specified period and take back the property. Such a provision is usually to the advantage of the mortgagor. In the present case, had the matter depended only on the construction of the contract as given in the proceeding of the Collector, much might be said in support of High Court's conclusions.”

From the above observation, it is apparent that the construction put by the High Court on the contemporaneous agreement and its

(1) I.L.R. 36, Allahabad 195.

finding that the right to redeem accrued after the period of 9 years was approved by the Privy Council. The facts of the present case are on a better footing because here the mortgagor had to incur an additional burden of Rs. 90 if he wanted to exercise his option of redemption within 10 years and in case he did not exercise that option, he was not entitled to redeem the property before the expiry of ten years. The limitation in the present case, therefore, commenced only after the expiry of the period of 10 years fixed in the agreement and as such the suit filed in the year 1970 was well within time.

(3) For the reasons recorded above, this appeal is allowed, the impugned judgment and decree set aside and a preliminary decree for redemption passed in favour of the appellant to the effect that if he pays in the court the amount of Rs. 900 on or before December 31, 1983, the respondent shall deliver to the plaintiff or to such person as the plaintiff appoints all documents in possession or power relating to the mortgage property and shall if so require retransfer the property to the plaintiff at his cost free from mortgage and all encumbrances created by the respondent or any person claiming under him and shall also put the plaintiff in possession of the suit property. It is further ordered that in case the appellant fails to make payment within the period fixed, this appeal shall stand dismissed. In view of the complicated question involved in the appeal, the parties are left to bear their own costs.

N. K. S.

FULL BENCH

Before P. C. Jain, A.C.J., D. S. Tewatia and I. S. Tiwana, JJ.

JAGTAR SINGH,—Petitioner.

versus

ADDITIONAL DIRECTOR, CONSOLIDATION OF HOLDINGS,
PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 2343 of 1981.

February 21, 1984.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 42—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949—Rule