

APPELLATE CIVIL.

Before Bal Raj Tuli and D. S. Tewatia, JJ.

SHADI RAM AND ANOTHER,—Appellants

versus

RULDU,—Respondent.

Regular Second Appeal No. 1396 of 1964.

November 20, 1970.

Limitation Act (IX of 1909)—Section 3 and Article 148—Execution of a mortgage when no period prescribed for redemption—Suit for redemption of the mortgage filed after a period of sixty years when Limitation Act, 1908, in force—Such suit—Whether barred under Article 148—Interpretation of statutes—Statute of limitation—How construed.

Held, that the law of limitation is *lex loci* and pertains to the law of procedure. If the assistance of a civil Court is invoked for the enforcement of rights by filing a suit, the suit must be filed according to the procedure prescribed for that suit. There is no suit for which no period of limitation is prescribed. It is, therefore, the statutory duty of a civil Court to dismiss a suit for redemption of a mortgage if it is filed after the expiry of sixty years from the date of the mortgage. In fact a civil Court has no jurisdiction to entertain and adjudicate upon a suit which is barred by limitation. It makes no difference if on the date of the mortgage no period of limitation had been provided for filing a suit for redemption. If the Limitation Act, 1908, is in force when the suit for redemption is brought, it has to be within sixty years of the date of mortgage. The jurisdiction of the Court to entertain and decide a suit is circumscribed by the condition that the suit must have been filed within the period of limitation prescribed therefor. There is no right in a suitor to have his suit decided even if it is beyond the period of limitation. It is not permissible to read in column 3 of First Schedule of Limitation Act, 1908, against Article 148 "when the Act came into force" instead of "when the right to redeem or to recover possession accrues". Hence a suit for redemption of a mortgage instituted after sixty years of the date of mortgage when the Limitation Act, 1908, is in force, is barred under Article 148 of the Act even if at the time of execution of mortgage no period of limitation was prescribed for a suit for redemption.

(Paras 6 and 7)

Held, that a statute of limitation, like all others, ought to receive such a construction as the language in its plain meaning imports. Equitable considerations are out of place in construing the provisions of a statute of limitation and the strict grammatical meaning of the words is the only safe guide. A Court ought not to put such an interpretation upon a statute of limitation by implication and inference as may have a penalising effect unless the Court is forced to do so by irresistible force of the language used. The provisions of the Act cannot be extended by analogy and principle.

(Para 10)

Case referred by Hon'ble Mr. Justice D. S. Tewatia, on 31st March, 1970, to a larger Bench for decision of the important question of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Bal Raj Tuli and the Hon'ble Mr. Justice D. S. Tewatia, on 20th November, 1970.

Regular Second appeal against the decree of the Court of Shri Raj Kumar Sharma, Senior Sub-Judge, with enhanced Appellate Power, Sangrur, dated the 26th day of October, 1964, affirming with costs that of Shri Jug Bhushan Garg, Sub-Judge, 1st Class, Sunam, dated the 31st January, 1964, granting the plaintiff a preliminary decree for redemption of the land in suit against the defendants on payment of Rs. 59 within one month from the date of the decree and further directing the defendants to deposit in the Court such documents as they might be possessing in respect of this mortgage and after that the plaintiff might apply for a final decree of redemption of the mortgage and leaving the parties to bear their own costs.

J. V. GUPTA AND H. R. BANSAL, ADVOCATES, for the appellants.

M. K. MAHAJAN, ADVOCATE, for the respondents.

JUDGMENT.

TULI, J.—The land in dispute was mortgaged by the predecessor-in-interest of the plaintiff-respondent with the predecessor-in-interest of the defendants-appellants sometime in 1955 Bk., for a sum of Rs. 59 only.

(2) On May 25, 1961, the plaintiff-respondent made an application to the Collector for redemption of the said mortgage under the provisions of the Redemption of Mortgages (Punjab) Act, 1913 which was dismissed on April 16, 1962. A copy of that order is Exhibit P-17. The plaintiff-respondent then filed the suit, out of which this appeal has arisen, on March. 18, 1963, for redemption of the said mortgage and possession of the land. The defendants contested the suit on the ground that it was barred by limitation and the right of the plaintiff to redeem the land had been extinguished. The learned trial Court framed the following issues :—

1. Whether the plaintiff is entitled to redeem the land ?
2. Whether the suit is barred by limitation ?
3. Relief.

The trial Court decided both issues 1 and 2 in favour of the plaintiff and decreed the suit on January 31, 1964. The defendants filed an appeal which was dismissed on October 26, 1964, by the Senior Sub-Judge, Sangrur. The present appeal, under section 100 of the Code of Civil Procedure, is directed against the judgment and decree passed by the learned Senior Sub-Judge. This appeal came up for hearing in the first instance before my learned brother Tewatia, J., who referred it to a larger Bench for decision by order dated March 31, 1970, in view of the fact that he was taking a view different from the one taken by Mehar Singh J., in *Balwant Singh and others. v. Arjun Singh and others* (1). This is how this appeal has been placed for final decision before us by the order of the Hon'ble Chief Justice.

(3) After hearing the learned counsel for both sides I am of the opinion that the matter agitated before my brother does not in fact arise in this appeal. The mortgage had been effected in 1955 Bk. (1898-99 A.D.), at Sunam in the erstwhile Patiala State. It is the common case of the parties that at that time no period of limitation was prescribed for a suit to redeem a mortgage nor was there any provision that after the expiry of sixty years from the date of the mortgage the right to sue for possession of the mortgaged land would lapse as is provided in section 28 of the Indian Limitation Act, 1908, hereinafter, called the Act. In the Patiala State the Limitation Act, was enacted for the first time in 1969 Bk. (1912 A.D.), the name of the Act, being Bhupindra Audh Sunai Act, hereinafter called the Patiala Act. This Act is almost a copy of the Indian Limitation Act, 1908.

(4) It was provided in clauses (a) and (b), of sub-section (4), of section 1, of the Patiala Act, that the provisions thereof would not apply to the suits, appeals or applications, pending in any Court on the date of its enforcement or which might be filed within one year thereof. It is clear from this provision that any suit, appeal or application which had become barred by time or might have become barred by time within one year of the enforcement of that Act, was to be filed within one year as provided therein but any other suit, appeal or application for which the period of limitation had been provided in the said Act, and that period of limitation was to expire after the period of one year, was to be

(1) R.S.A. 105(P) of 1954 decided on 19th December, 1958.

governed by the said Act. Section 3 of the Act, as well as of the Patiala Act, provided that every suit instituted, appeal preferred and application made after the period of limitation prescribed therefor, by the First Schedule shall be dismissed although limitation has not been set up as a defence unless the case is covered by any of the provisions contained in sections 4 to 25, of the said Acts.

(5) When the present suit was filed on March 18, 1963, in the civil Court, the Limitation Act, applicable was the Indian Limitation Act, 1908. Under section 3 thereof the suit had to be dismissed if it had not been filed within the period of limitation prescribed in the Schedule. Admittedly according to Article 148 of the Schedule the suit was barred by time as it had been filed more than sixty years after the date on which the right to redeem accrued. The parties' learned counsel agree that the right to redeem accrued on the date the mortgage was effected and nothing has been pleaded to extend that time under the provisions of sections 4 to 25, of the Act.

(6) The law of limitation is *lex loci* and pertains to the law of procedure. If the assistance of a civil Court is invoked for the enforcement of rights by filing a suit, the suit must be filed according to the procedure prescribed therefor, that is, within the period of limitation prescribed for that suit. There is no suit for which no period of limitation is prescribed. It was, therefore, the statutory duty of the civil Court to dismiss the suit as barred by time because it had been filed after the expiry of sixty years from the date of the mortgage. In fact a civil Court has no jurisdiction to entertain and adjudicate upon a suit which is barred by limitation.

(7) The argument of the learned counsel for the plaintiff-respondent is that because on the date of the mortgage no period of limitation had been provided for filing a suit for redemption, his suit cannot be dismissed on the ground, that it was filed after more than sixty years of the date of the mortgage as provided in Article 148 of the Schedule to the Act. The argument proceeds that the plaintiff-respondent's vested right could not be taken away by a law of procedure. I regret my inability to accept that contention. When the law of limitation is there, nobody can claim that his suit must be tried even if it is barred by time. According to that rule the jurisdiction of the Court to entertain and decide a suit is circumscribed by the condition that the suit must have been filed within

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the period of limitation prescribed therefor. There is no right in a suitor to have his suit decided even if it is beyond the period of limitation. In the Patiala Act, as I have pointed above, one year's period was allowed to file any suit, appeal or application which would have been barred by time, if filed after the expiry of one year from the date of the enforcement of the Act, which provision was meant for the protection of the rights of the suitors falling in that category.

(8) Similar provision was made by The Part B States (Laws) Act, 1951, while making the Indian Limitation Act, 1908, applicable to the territories of the erstwhile Part B States. Section 30 was inserted in the Act, which reads as under :—

“Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by any law corresponding to this Act in force in a Part B State, which is repealed by the Part B States (Laws) Act, 1951, may be instituted within the period of two years next after the coming into force of this Act in that Part B State or within the period prescribed for such suit by such corresponding law whichever period expires first.”

Under this section if the period of limitation prescribed under the law of limitation in a Part B State was to expire within two years of the coming into force of the said Act, the suit had to be filed within that time and if the period of limitation for a suit in the Limitation Act of Part B State was longer than the one provided by the Indian Limitation Act, 1908 and more than two years were still there to file the suit, then notwithstanding that the period provided in the Indian Limitation Act had expired or would have expired within two years of the enforcement of the said Act, the suit could be filed only within two years. If such a suit was filed beyond two years as prescribed, it had to be dismissed as barred by time even if it was within time. According to the period of limitation prescribed in the Limitation Act of Part B State. There is thus no question of there being any vested right in a suitor with regard to the period of limitation. That period can always be reduced or enlarged after safeguarding the interests of the persons affected. That was done by the Patiala Act as well as by the Part B States (Laws) Act, 1951.

It has, however, to be noted that in 1969 Bk. (1912 A.D.) the plaintiff-respondent had still 46 years out of the period of limitation provided for a suit for redemption under Article 134 of the Patiala Act which corresponds to Article 148 of the Act. In view of these considerations the suit of the plaintiff-respondent was barred by time and should have been dismissed on that ground.

(9) The learned counsel for the plaintiff-respondent has, however, relied on the judgment of Mehar Singh J. in *Balwant Singh and others v. Arjun Singh and others* (1). In that case the mortgage of land with possession had been effected by Attar Singh in favour of Dharam Singh in the middle of March, 1892. The decendants of Attar Singh filed a suit for redemption of the land against the decendants of Dharam Singh, on August 7, 1952, that is, a few months after the expiry of six years and it was pleaded by the defendants that the suit was barred by time. Dealing with this connection the learned Judge observed as under :—

“..... the petition by the plaintiffs to the Collector was not time-barred because in the former Patiala State the first law of limitation, Bhupindra Oudh Sunai Act, 1969 Bk., did not come into force until from 1969 Bk. It appears that before that there was no law of limitation in the former Patiala State. The previous mortgage was apparently of a much earlier date. Down to 1969 Bk. there was no limitation provided for its redemption. In the Bhupindra Oudh Sunai Act, 1969 Bk. the limitation provided for redemption of a mortgage is 60 years and there is a provision in it, corresponding to section 28 of the Limitation Act, because of which the right of a mortgagor to redeem property was to be extinguished at the termination of the period of 60 years which period was provided for instituting a suit for possession of the property. The provision operated to extinguish a vested right. The learned counsel for the defendants urges that no party has a vested right in the period of limitation, and on the coming into force of the Bhupindra Oudh Sunai Act from 1969 Bk., it was for the plaintiffs to prove that under the provisions of that Act their right of redemption to the land had been extinguished. It is apparent that if the limitation is to start from the date or rather the year of the Act, the plaintiffs enforced their right of redemption within limitation from any consideration. The learned counsel on either side is not

able to say whether the Bhupindra Oudh Sunai Act made any provision for the mortgages pre-existing to the date of its enforcement. The learned counsel for the defendants says that in the case of a subsequent limitation statute curtailing the period of limitation under the previously existing such statute, the suit must be brought within the new period of limitation as the law of limitation is merely a rule of procedure. This is so, but that is where such law operates to bar remedy, but where its effect is to take away or extinguish a vested right, it is not a procedural law, and in that case it does not operate retrospectively, except where expressly stated or such is the conclusion by necessary implication. There being no indication how the Bhupindra Oudh Sunai Act, 1969 Bk., dealt with the mortgages existing previous to the date of its enforcement, it is rather difficult to see how the provisions of that Act, parallel to section 28 of the Indian Limitation Act, operated to extinguish a vested right in a party as the plaintiffs in the present case."

A somewhat similar question arose before a Division Bench in *Shahadat v. Ganesh Das* (2) and, at page 106, the learned Judges observed:—

'In deciding that the mortgagors' right to redeem had been extinguished before 1856 the Courts below acted upon the assumption that the rule of limitation barring the right of redemption on the expiration of 60 years from mortgage was in force from the date of the mortgage in question. But the learned counsel for the defendants-appellants points out that no law of limitation was in force in the Punjab in 1856 or before that, and that the first Limitation Act was enacted in 1859. Therefore, he argues that in the absence of any law of limitation, it could not be said that the mortgagors ceased to be the proprietors of the land mortgaged or that their right to redeem was lost by lapse of time. Presumably, the revenue authorities described the parties in the records of 1856 as mortgagors and mortgagees because this relationship between them was admitted by all concerned. The learned counsel for the plaintiffs has nothing to urge to the contrary on this point and, therefore, it is not possible to hold that the mortgagees had become owners, in or before 1856.'

So that if this contention, which has been shown to be negatived by the terms of the mortgage deed, Exhibit P.F., was to be considered, even so the petition of the plaintiffs to the (sic) is not shown, to have been time barred by the lapse of the period of 60 years.

(10) From the observations of the learned Judge it appears that he was of the opinion that the *terminus a quo* started from the date on which the first Limitation Act in Patiala came into force because in that Act no provision had been made in respect of the mortgages effected before that date. Apparently the provisions contained in clauses (a) and (b) of sub-section (4) of section 1 of the Patiala Act, referred to above, were not brought to his notice. The learned Judge emphasised this fact more than once in his judgment which clearly shows that the decision would have been otherwise if the said provisions were brought to his notice. With great respect to the learned Judge I have to express my dissent from his view that the period of limitation started from the date of the commencement of the Patiala Act. It is well settled that a statute of limitation, like all others, ought to receive such a construction as the language in its plain meaning imports. Equitable considerations are out of place in construing the provisions of a statute of limitation and the strict grammatical meaning of the words is the only safe guide. A Court ought not to put such an interpretation upon a statute of limitation by implication and inference as may have a penalising effect unless the Court is forced to do so by irresistible force of the language used. The provisions of the Act cannot be extended by analogy and principle. It is, therefore, not permissible to read in column 3 of the First Schedule to the Act against Article 148 "when the Act came into force" instead of "when the right to redeem or to recover possession accrues." The learned Judge for his view relied on a judgment of a Division Bench of the Lahore High Court in *Shahadat and others v. Ganesh Das and others*, (2) (supra) which is, however, on a different topic. There the mortgagees' claim was that they had become the owners of the mortgaged property in 1856 because of the expiry of the period of sixty years from the date of the mortgage. That plea was negatived on ground that in the absence of any Limitation Act providing a period of limitation for enforcing the right of redemption or a provision like the one contained in section 28 of the Act, it could not be said that the right of the mortgagors in the mortgaged property had extinguished. In 1856 there was no provision providing for the extinguishment of the mortgagors' right to possession as a provision to that effect was made for the first time in the Limitation Act enforced in 1859, and therefore this plea was not open to the mortgagees in

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1856. In that case the Court was not called upon to decide whether any suit brought by a mortgagor or the mortgagee on the basis of a mortgage was within time or out of time. Only the claim of the mortgagees to the ownership of the mortgaged land was negatived. The learned counsel for the plaintiff-respondent, therefore, can derive no help from these two judgments.

(11) The question whether the Patiala Act was retrospective in operation or not does not arise for determination in this case in view of the fact that a sufficiently long period of 46 years remained for the filing of the suit when the Patiala Act was brought into force. No right of the mortgagor or mortgagee was extinguished by the coming into force of that Act; only the *terminus a quo* for the suit for redemption had started.

(12) For the reasons given above I hold that the suit of the plaintiff-respondent was barred by time and should have been dismissed on that ground. In view of that conclusion the appeal is accepted and the suit of the plaintiff-respondent is dismissed leaving the parties to bear their own costs throughout, as the point of law involved in the appeal was not free from difficulty.

D. S. Tewatia, J.—I agree.

K.S.K.

APPELLATE CIVIL.

Before Prem Chand Pandit and S. S. Sandhawalia, JJ.

KASHMIR SINGH,—Appellant.

versus

MEHAR CHAND,—Respondent.

Regular Second Appeal No. 819 of 1967.

November 26, 1970.

Limitation Act (XXXVI of 1963)—Article 97—Sale of an undivided share in property under mortgage with possession—Subject-matter of the sale—Whether admits of physical possession—Possession taken by the vendee by redemption of the mortgage—Suit for possession by pre-emption of the property—Limitation for—Whether starts from the date of taking such possession or from the date of registration of the sale deed.

Held, that under article 97 of the Limitation Act, 1963, the limitation of one year for instituting a suit for possession by pre-emption starts when the purchaser takes under the sale the physical possession of the whole or part of the property sold. If the subject-matter of the sale does not admit of physical possession of the whole or part of the property the limitation of one year will start from the date when the sale deed is registered. Where