

role of S. C. Registry along with the unworthy role of this Court's Registry also figured with my comments that these Registries are the Bandies of the Chief Justices and can safely ignore violate written orders or also Rcles of "the Supreme Court and High Court."

(51) This is the kind of person we had to deal with. What flows from this letter is a matter, which could await our consideration at a future time.

N.K.S.

Before R. N. Mittal, J.

BANWARI LAL (DECEASED),—Appellant.

versus

PURAN CHAND AND OTHERS,—Respondents.

Regular Second Appeal No. 1501 of 1976.

January 21, 1985.

Transfer of Property Act (IV of 1882)—Section 60—Property mortgaged by duly executed mortgage deed—Clause in deed stipulating definite period for redemption failing which mortgage to be treated as sale—Such restriction on the right of the mortgagor—Whether a clog on the equity of redemption—Such clog—Whether liable to be ignored as void.

Held, that the clause in a mortgage deed which bars redemption is in the nature of clog on the equity of redemption. The right of the mortgagor can not be taken away or restricted by such a clause. The courts would ignore any contract, the effect of which was to deprive the mortgagor of the right to redeem the mortgage. As such the clause in the mortgage deed that the property would be redeemed within a stipulated period constitutes a clog on the equity of redemption and is therefore void and liable to be ignored by the Court.

(Page 6)

Banwari Lal (deceased) v. Puran Chand and others
(R. N. Mittal, J.)

Regular Second Appeal from the decree of the Court of the Additional District Judge, Gurdaspur, dated the 6th day of May, 1976, affirming that of the Sub-Judge II Class, Gurdaspur, dated the 28th day of October, 1974, dismissing the suit of the plaintiff with costs.

D. S. Bali, Advocate, for the Appellants.

R. L. Luthara, Advocate, for the Respondent No. 3.

JUDGEMENT

Rajendra Nath Mittal, J.

(1) This second appeal has been filed by the plaintiff against the judgment and decree of the Additional District Judge, Gurdaspur, dated 6th May, 1976.

(2) Briefly the facts are that the plaintiff was the owner of a plot measuring 10 Marlas comprised in Khasra No. 391, situated in village Bhumbli. He mortgaged it by three mortgage deeds dated 18th September, 1962 in favour of defendants Nos. 1 to 3 for a total sum of Rs. 299.62 P. It was *inter alia* provided in the mortgage deeds that the land would be redeemable within one year failing which the transaction would be considered to be a sale of the property. It was also provided that the mortgagees would be entitled to make construction on the plot and the plaintiff would be entitled to redeem the same on payment of the mortgage money and the cost of construction. The plaintiff instituted a suit for redemption alleging that the stipulation in the mortgage deed turning the transaction of mortgage into sale in case the property was not redeemed within a period of one year was a clog on the equity of redemption.

(3) The suit was contested by the defendants who pleaded that the said term in the mortgage deed was not clog, on equity of redemption. It is further pleaded that they had raised a construction on the land and, therefore, they were entitled to the cost of construction in case the property was ordered to be redeemed.

(4) The trial Court held that the clause in the mortgage deed did not amount to clog on equity of redemption and, therefore, the defendants had become owners of the property in terms of the said clause. It further held that the defendants had spent an amount of Rs. 4,000/-

on construction. In view of the finding on the first point, it dismissed the suit of the plaintiffs. In appeal the lower appellate Court affirmed the judgment of trial Court and dismissed the same. The plaintiff has come up in second appeal to this Court.

(5) The first question that arises for determination is as to whether the clause in the mortgage deed restricting the right of the plaintiff to redeem the property within one year constitutes a clog on the equity of redemption and is, therefore, void.

(6) I have heard the learned counsel for the parties at a considerable length. The clause in a mortgage deed which bars redemption is in the nature of a clog on the equity of redemption. It is well settled that the right of the mortgagor to redeem the property cannot be taken away or restricted by such a clause. If a clause of this type has been incorporated in the mortgage deed, it will be deemed to be void and the Court will ignore it. Reference in this regard may be made to the observation of Lindley, *M. R. in Santley v. Milde* (1), which are as follows:

“The principle is this: a mortgage is a conveyance of land or an assignment of chattels as a security for the payment of a debt or the discharge of some other obligation for which it is given. This is the idea of a mortgage; and the security is redeemable on the payment or discharge of such debt or obligation, any provision to the contrary notwithstanding. That, in my opinion, is the law. Any provision inserted to prevent redemption on payment or performance of the debt obligation, for which the security was given, is what is meant by a clog or fetter on the equity of redemption, and is, therefore, void. It follows from this, that once a mortgage always a mortgage.”

The principle has been noticed by various High Courts in India and has been settled by the Supreme Court in *Murarilal v. Devkaran* (2). In that case a clause incorporated in the mortgage deed provided that the amount due under the mortgage should be repaid to the mortgagee within 15 years whereupon the property would be redeemed. It had also stipulated that if the payment was not made within the said period, the mortgagee would become the owner of the property. The High Court of Rajasthan held that the relevant provision as to the period within which the mortgage amount had to be

(1) (1899) 2 Ch. 474.

(2) A.I.R. 1965 S.C. 225.

Banwari Lal (deceased) v. Puran Chand and others
(R. N. Mittal, J.)

repaid amounted to a clog on the equity of redemption and could not be pleaded as a bar to the suit. The Supreme Court affirmed the finding of the High Court observing that if a mortgage deed contained a stipulation which unreasonably restrained or restricted the mortgagors equity of redemption courts were empowered to ignore that stipulation and enforce the mortgagor's right to redeem subject to the general law of limitation prescribed in that behalf. The counsel for the respondent made reference to *Ganga Dhar v. Shankar Lal and other* (3). Even in that case it was laid down that the rule against clogs on the equity of redemption was that a mortgage would always be redeemable and a mortgagor's right to redeem would neither be taken away nor be limited by any contract between the parties. The Courts would ignore any contract the effect of which was to deprive the mortgagor of the right to redeem the mortgage. After taking into consideration all the above-said circumstances, I am of the view that the clause in the mortgage deed that the property would be redeemed within a period of one year constitutes a clog on the equity of redemption and is, therefore, void.

(7) The next question that arises for determination is on payment of what amount the plaintiff is entitled to redeem the property. Undisputably the mortgage amount is Rs. 299.62 P. In addition, the defendants are entitled to the cost of construction made by them as it was specifically provided in the mortgage deed that if they raised any construction, they would be entitled to its cost at the time of redemption. The trial Court, after noticing the evidence, came to the conclusion that the cost of construction made by the defendants was of the amount of Rs. 4,000/-. The finding of the trial Court was not challenged before the appellate Court. The counsel for the parties have not been able to show to me that the conclusion of the trial Court is erroneous. Consequently I affirm the finding of the trial Court in this regard. The plaintiff is, therefore, entitled to redeem the property on payment of Rs. 4,299.62 P. to the defendants.

(8) Therefore, I accept the appeal, set aside the judgement and decree of the Courts below and pass a decree for redemption on deposit of Rs. 4,299.62 P. in the trial Court. The amount may be deposited within six months. No order as to costs.

H.S.B.

(3) A.I.R. 1958 S.C. 770.