

Gurmukh Singh and another v. Sarwan Singh and others  
(A. L. Bahri, J.)

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appeal of the appellant on any tenuous ground so that the respondents may enjoy and aggrandize his unjust enrichment. On this point, we say no more”.

(8) On consideration of the entire matter, I am of the considered view that it is a case in which the mineral mining rights have been given to the respondents in an arbitrary manner. Had the State put on auction the extracting of mining rights, it would have certainly fetched more than Rs. 5 lacs as annual contract money. There is nothing on record to show that the respondents have discovered the mines and they have acquired specialised knowledge in the field of mining. The so-called experience/knowledge can also be attained by others also if given a chance.

(9) In view of the aforesaid reasons and observations of the Supreme Court, the writ petition is allowed and the order of the Government, Annexure P/4 is quashed with the direction that the respondents to auction the said minor mineral rights through public auction by giving wide publicity.

(10) C.M. No. 9004 of 1990 also stands disposed of. In the circumstances of the case, there will be no order as to costs.

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S.C.K.

Before A. L. Bahri, J.

GURMUKH SINGH AND ANOTHER.--Appellants.

versus

SARWAN SINGH AND OTHERS.--Respondents.

Regular Second Appeal No. 2570 of 1989.

31st January, 1991.

*Redemption of Mortgages Act, 1913—Ss. 12 & 13—Application for redemption allowed—Order of redemption challenged—Order not implemented on technical grounds—Fresh applications for redemption filed—Such application rejected by Collector—Suit filed by mortgagor to challenge the order of Collector—Maintainability of.*

Held, that a reading of Ss. 12 and 13 of the Act makes it abundantly clear that two remedies are available in respect of the mortgages; firstly to establish right of redemption under the provisions of the aforesaid Act and if the decision of the Collector is not favourable to establish the right by filing a suit. Of course, when first application is dismissed by the Collector, second application will not be maintainable as provided under S. 13 of the Act. However, when first application was allowed and the opposite party had challenged the said order and on technical grounds the order is not implemented that will not extinguish the mortgagors right to redeem the mortgage. Right to redeem the mortgage could only be extinguished by efflux of time or by any other provision in any Statute, such as the provisions of the Redemption of Mortgages (Punjab) Act. The provisions of this Act, therefore, to be strictly construed. (Para 4)

*Regular Second Appeal from the order of the Court of Shri Harjit Singh, Additional District Judge, Kapurthala, dated 7th September, 1989 reversing with costs that of Shri S. C. Marwaha Sub Judge, 1st Class Phagwara, dated the 30th March, 1987 and setting aside the order of the Collector dated 31st July, 1984 and holding that the plaintiff appellant is entitled to get the land redeemed measuring 6 Kanals 7 Marlas and decreeing the suit of the plaintiff-appellant for joint possession by redemption of the land measuring 6 Kanals 7 Marlas, the details of which are given in the head note of the plaint on payment of Rs. 1,200 within two months from the date of this order.*

*Claim:—Suit for possession by redemption of land measuring 6K-7M comprising Khasra Nos. 464/5—10, khata No. 203/424 and land measuring 0—14 Marlas out of khasra No. 463/2-0, khata No. 207/420 and land measuring 0-3 marlas being 10/13th share of land measuring 1K-19M comprising khasra 453/1—10, 452/0—9, khasra No. 213/444 as entered in jamabandi for the years 1979-80 situated in the revenue estate of village Rehana Jattan, Teh. Phagwara, District, Kapurthala, on payment of Rs. 1,200 and that order of Collector Phagwara dated 31st July, 1984 disallowing the petition of redemption of the plaintiff in respect of suit land is liable to be set aside, being illegal, ineffective and void.*

*Claim in Appeal: For reversal of the order of lower appellate Court.*

J. S. Virk, Advocate, for the Appellants.

P. N. Aggarwal, Advocate, for Respondent No. 1.

S. P. Gupta, Advocate, for Respondent No's. 2, 5, 8, 10, 11, 14, & 15.

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JUDGMENT

A. L. Bahri, J.

(1) This appeal is by the defendants Gurmukh Singh and others challenging judgment and decree of Additional District Judge, Kapurthala, dated September 7, 1989, whereby appeal filed by Sarwan Singh plaintiff was accepted and judgment and decree of the trial Court was set aside whereby the suit was dismissed.

(2) Sarwan Singh filed the suit for possession by redemption of 6 Kanals 7 Marlas of land. He claimed to be co-sharer having purchased 1 Kanal 17 Marlas of land from other co-sharers Amar Chand and Faqiria sons of Ram Chand son of Ishar. Moola Singh, another son of Ishar, had mortgaged land measuring 6 Kanals 7 Marlas on January 28, 1985 in favour of Jawala and Gurmukh Singh, his brothers. Sarwan Singh filed application before the Collector for redemption of 1 Kanal 17 Marlas of land which he had purchased. The Collector allowed redemption,—*vide* his order dated June 1, 1977. A civil suit was filed challenging the aforesaid order of the Collector by some of the present defendants. The suit was dismissed. However, on appeal the suit was decreed and order of the Collector was held to be bad in law as partial redemption could not be allowed. This led Sarwan Singh plaintiff to file another application before the Collector for redemption of the entire mortgaged land measuring 6 Kanals 7 Marlas. This application was filed on February 23, 1983 and was dismissed by the Collector on July 31, 1984. Sarwan Singh thus filed the present suit challenging order of the Collector aforesaid claiming redemption of the entire land which was mortgaged measuring 6 Kanals 7 Marlas claiming himself to be a co-sharer by purchase of 1 Kanal 17 Marlas of land, as stated above. The trial Court dismissed the suit whereas the lower appellate Court has decreed the suit.

(3) Though on the pleadings of the parties as many as nine issues were framed, however, in appeal the points raised are being discussed.

(4) It has been argued on behalf of the defendant-appellants that second application before the Collector for redemption of the land was not maintainable. Hence suit for redemption of the land is also not maintainable. In support of this contention reliance

has been placed on Section 13 of the Redemption of Mortgages Act, 1913 (for short called 'the Act') which reads as under :—

“13. NO SECOND PETITION:—The dismissal of a petition under this Act shall bar any further petition under this Act by the same petitioner or by representative in respect of the same mortgage.”

There is no force in the contention of the learned counsel for the appellants. What is barred under Section 13 of the Act is a second petition for redemption in respect of the same mortgage where earlier petition had been dismissed. Present is not a case where earlier petition filed by Sarwan Singh was dismissed by the Collector which could bar the presentation of the second petition. Section 12 of the Act reads as under :—

“12. Saving of suits to establish rights:—Any party aggrieved by an order made under Sections 6, 7, 8, 9, 10 or 11 of this Act may institute a suit to establish his rights in respect of the mortgage, but subject to the result of such suit, if any, the order shall be conclusive.

Setting aside *ex parte* orders or orders of dismissal:—Notwithstanding anything in this section a mortgagee against whom an *ex parte* order under section 7 has been made or a petitioner, whose petition has been dismissed in default under section 6 may apply to the Collector to have such order of dismissal set aside, and the Collector may in his discretion set aside, such order of dismissal on such terms as to costs of otherwise as he may deem fit; provided that the order of dismissal shall not be set aside unless notice of the application has been served on the opposite party.

This provision authorises a person whose application in respect of the mortgage has been dismissed by the Collector to establish his right in a civil Court by instituting a civil suit. Subject to the result of the suit, the orders passed by the Collector under sections 6 to 11 of the Act are to remain as conclusive. Reading of the aforesaid two provisions makes it abundantly clear that two remedies are available in respect of the mortgages; firstly to establish right of redemption under the provisions of aforesaid Act and if the decision of the Collector is not favourable to establish the right by filing a

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suit. Of course, when first application is dismissed by the Collector, second application will not be maintainable as provided under S. 13 of the Act. However, when first application was allowed and the opposite party had challenged the said order and on technical grounds the order is not implemented that will not extinguish the mortgagor's right to redeem the mortgage. Learned counsel for the appellants referred to the decision of the Full Bench of the Lahore High Court in *Tulsi Das alias Nirmal Das and others v. Diala Ram*, (1). That was a case where a petition under S. 4 of the Act was dismissed as pre-mature and it was held that Section 13 barred another application. On facts ratio of the decision is not applicable to the case in hand. The only order of the Collector which rejected the prayer for redemption is of July 31, 1984 and Sarwan Singh Plaintiff was well within his rights to challenge the same and establish his right of redemption by filing the suit. Obviously, the earlier order of the Collector which was in favour of Sarwan Singh was not to be challenged by him. Either by allowing application of Sarwan Singh to redeem 1-K, 17M land or by decretal of the suit filed by Gurmukh Singh and others challenging the aforesaid order of the Collector mortgage in any manner was extinguished. Right to redeem the mortgage could only be extinguished by efflux of time or by any other provision in any Statute, such as the provisions of the Redemption of Mortgages (Punjab) Act. The provisions of this Act are, therefore, to be strictly construed. It was held by the Privy Council in *Raghunath Singh and others v. Hansraj Kunwar and others* (2), that the right to redeem is a right conferred upon the mortgagor by enactment of which he can only be deprived by means and in manner enacted for that purpose and strictly complied with. That was a case where a provision was made in the decree in a suit for redemption that in case of default by the plaintiff for payment, his case was to stand as dismissed. It was held that such an order could not be construed as meaning that the plaintiff was to be debarred of all rights to redeem or that the decree was an order of a Court extinguishing the right to redeem within the provisions of Section 16 of the Transfer of Property Act. The second suit for redemption in such a case was held to be maintainable. Further, clarifying it was observed that unless it could be said that a decree involved a decision that

(1) A.I.R. 1943, Lahore 176.

(2) A.I.R. 1934 P.C. 205.

mortgagor's right to redeem was extinguished, it could not operate by way of *res judicata* so as to prevent the Courts under S. 11 of the Code of Civil Procedure from trying a second redemption suit. Several cases have been cited which were discussed by the Full Bench of this Court in *Chanan Singh v. Smt. Majo and another*, (3) which need not be discussed in detail. The Full Bench, in a case where application filed under the Redemption of Mortgages (Punjab) Act was held to be premature, held that the bar of S. 12 of the Act did not apply to the suit being brought for redemption of the mortgages under the general law. Relying upon the aforesaid Full Bench decision in *Nikka Singh and others v. Darshan Singh and others*, (4) wherein the Collector simply refused to proceed with the application filed before him without pronouncing any right on the mortgagor, it was held that remedy of suit for redemption under the general law was not barred, Section 12 of the Redemption of Mortgages (Punjab) Act was not attracted.

(5) The contention of learned counsel for the appellants is that the present suit should be held to be barred by time as having not been filed within a period of twelve months from the first order of the Collector dated June 1, 1977. Reference has been made to Article 100 of the First Schedule attached to the Limitation Act which provides a period of one year for setting aside an order of an officer of the Government in his official capacity. On the other side, it has been argued that Article 100 aforesaid would not be applicable to the case in hand as far as earlier order of the Collector dated June 1, 1977 is concerned, whereas from the subsequent order of the Collector whereby application of the plaintiff for redemption of 6-K, 17-M of land was dismissed is concerned, the present suit is well within time. Even otherwise, it is argued that the present suit had been filed within thirty years to redeem the mortgaged property as provided under Article 61 of the Limitation Act and is well within time. This matter is concluded by the decision of the Supreme Court in *Sheolal and others v. Sultan and others*, (5). This was a case before the Limitation Act was amended and Article 14 of the old Limitation Act was applicable which is equivalent to Article 100 of the Limitation Act. The Collector dismissed application for redemption of the mortgage stating that complicated questions of law were involved and the mortgagor was relegated to civil suit.

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(3) 1976 P.L.R. 726.

(4) 1984 P.L.J. 33.

(5) A.I.R. 1971, S.C. 93.

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It was held that such an order did not fall under S. 9 of the Redemption of Mortgages (Punjab) Act to attract the provisions of Article 14 of the Limitation Act. It was held as under :

“An order relegating the mortgagor to a civil suit for obtaining an order of redemption even if it becomes final does not bar a suit for redemption, for it raise no cloud on the title of the mortgagor arising out of the mortgage. Such an order is not one which is required to be set aside. An order required to be set aside is one which the officer making it has jurisdiction to make it and has the effect of barring the claim for relief unless it is set aside. The order of the Assistant Collector merely declared the rights of the plaintiff under the common law; it did not bar the claim to relief for redemption in civil suit, and on that account it was not an order which was required to be set aside.”

Applying the ratio of the decision of the Supreme Court to the facts of the case in hand, it may be noticed that order dated June 1, 1977 passed by the Collector being in favour of Sarwan Singh plaintiff allowing redemption of 1-K, 17-M of land was not required to be set aside by Sarwan Singh by filing a suit. It was only subsequent order of the Collector dated July 31, 1984 whereby application of Sarwan Singh for redemption of their entire land 6-K, 17-M was rejected that gave cause of action to him to challenge the same in the Civil Court. Therefrom the present suit having been filed on October 10, 1984 is obviously within time.

(6) It has been argued on behalf of the appellants that Sarwan Singh is not entitled to redeem the entire mortgaged land as he is only purchaser of 1-K, 17-M of land. There is no force in this contention. A co-sharer before partition is effected is entitled to each bit of the joint land. By purchasing 1K, 17-M of land Sarwan Singh plaintiff became a co-sharer as the land was purchased from Amar Chand and Faquira sons of Ram Chand son of Ishar, who were co-sharer. Till partition is effected a co-sharer is entitled to get the land redeemed from the mortgagees on payment of the mortgaged amount.

(7) The mere fact that the mortgagees are also co-sharers in the mortgaged land being brothers of the mortgagor, is no ground to

hold that the mortgage cannot be redeemed. In such circumstances a decree for joint possession is to be passed with further clarification that at the time of partition the present plaintiff would only be entitled to share of the land purchased by him out of the entire land including the mortgaged land.

(8) For the reasons recorded, finding no merit in the appeal the same is dismissed with costs. Judgment and decree of the lower Appellate Court are affirmed as above.

S.C.K.

Before : N. C. Jain, J.

STATE OF HARYANA,—Appellant.

*versus*

LAKHAN LAL,—Respondent.

Regular Second Appeal No. 784 of 1984.

8th March, 1991.

*Punjab Police Rules, 1934—Rl. 16.2(1)—Scope of—Gravest acts of misconduct—Maintainability of.*

*Held*, that even one act of misconduct would be sufficient to attract the applicability of rule 16.2 (1) provided the act is gravest. The gravest act, of course, is incapable of any strict definition. The distinction has to be drawn by the punishing authority between misconduct and grave misconduct. Misconduct should not be of an ordinary nature and it always has to be of a serious nature. The gravest act does not mean that the number of acts complained of should be more than one. The use of the word 'acts' in rule 16.2 (1) can be said to include a single gravest act of misconduct. But the punishing authority must record a firm finding that the act complained of was of such a grave nature that it proved incorrigibility and complete unfitness for police service before the punishment of dismissal was awarded.

((Para 7)

*Regular Second Appeal from the order of the Court of Shri V. K. Jain (II) Addl. Distt. Judge, Hissar, dated 12th December, 1983, reversing that of Shri R. K. Kashyap, HCS, Sub Judge, IInd Class, Hissar, dated 24th December, 1982 decreeing the suit of the plaintiff for declaration as prayed with costs throughout.*