

violative of the rule of law and of the property rights of the said petitioners and would be liable to be restrained and prohibited in appropriate proceedings.

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No other point was pressed before us by the learned counsel for the parties.

Narula, J.

I would, therefore, allow this writ petition to the extent indicated above, but, in the circumstances of the case, would leave the parties to bear their own costs.

INDER DEV DUA, J.—I agree.

Dua, J.

B.R.T.

LETTERS PATENT APPEAL

Before S. S. Dulat and R. P. Khosla, JJ.

DEWAN CHAND,—*Appellant*

versus

RAGHBIR SINGH, AND OTHERS,—*Respondents.*

Letters Patent Appeal No: 85 of 1962.

Limitation Act (IX of 1908)—Article 14—Suit to recover possession of mortgaged land on the ground that mortgage had been extinguished—Whether governed by Article 14 when application under the Redemption of Mortgaged Lands (Punjab) Act (II of 1913) had been dismissed by the Collector on the ground that the matter was too complicated and parties should get a decision from civil Court.

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Held, that where the Collector dismisses the application of a mortgagor under Section 9 of the Redemption of Mortgaged Lands (Punjab) Act, 1913, on the ground that the matter was too complicated and the parties should get their rights settled in the civil Court, the Collector decides nothing against the mortgagor and it is not necessary for him to file a suit to set aside that order of the Collector. If he later on files a suit for possession of the mortgaged land by redemption or on the ground that the mortgage had become extinguished, the suit is to be considered as a simple suit to establish the plaintiff's right in the land in obedience to the Collector's decision and not to set aside his order. Such a suit is not governed by Article 14 of the Limitation Act, 1908, but by the articles providing for possession or redemption.

Letters Patent Appeal under Clause 10 of the Letters Patent from the decree passed by the Hon'ble Mr. Justice Shamsheer Bahadur, dated the 14th day of February, 1962, in R.S.A. No. 1382 of 1960, reversing that of Shri C. S. Tiwana, Senior Sub-Judge, with Enhanced Appellate Powers, Amritsar, dated the 7th June, 1960, who affirmed with costs that of Shri Hukam Chand, Sub-Judge, 1st Class, Amritsar, dated the 1st June, 1959 and dismissing the plaintiff's suit and leaving the parties to bear their own costs before the Single Judge and the trial Court and also dismissing the cross-objections.

Suit for possession of land measuring 10 Kanals 12 Marlas Khasra No. 3014/3217 according to present settlement entered in Jamabandi 1952-63, situated at Jandila Guru, Tehsil and District Amritsar.

D. N. AGGARWAL, A. L. BAHRI AND G. R. MAJITHIA, ADVOCATES,
for the Appellant.

ROOP CHAND, ADVOCATE, for the Respondents.

JUDGMENT

Dulat, J.

DULAT, J.—The facts leading to the present appeal under clause 10 of the Letters Patent are these. Fazal-ul-din and others mortgaged 202 kanals and 19 marlas of land with Mehar Singh in 1913 and a further mortgage was created on the same land in 1916. Out of this land, Fazal-ul-din and others sold in March, 1923 a small piece measuring 10 kanals and 12 marlas to Diwan Chand comprised in Khasra No. 3217. The land, of course, remained in possession of the mortgagee. In 1944 Fazal-ul-din and others brought a suit for redemption and actually succeeded in obtaining a decree but, as they left India at the time of the partition, they did not obtain actual possession. After the partition the Competent Officer appointed under the Evacuee Interest (Separation) Act, thinking that the entire land was evacuee property, proceeded to deal with it and he found in accordance with the provisions of that Act that the mortgage, having lasted more than twenty years, stood extinguished by operation of law. Wishing to take advantage of that finding, Diwan Chand brought the present suit in March, 1958 for the possession of the 10 Kanals and 12 Marlas of land that had been sold to him and regarding which he claimed that the mortgage was extinguished. The suit was resisted by the mortgagees,

being the successors-in-interest of Mehar Singh, who raised a number of pleas. One of these was that the mortgage on the land sold to Diwan Chand was not extinguished as it was at the time of the partition and for a long time before then, not evacuee property. Another objection was to the form of the suit, the plea being that the suit should have been for redemption. It was also pleaded that Diwan Chand was not the owner of the land, the objection being to the fact of the sale in his favour. The trial Court found that the land in suit had been sold to Diwan Chand but that the mortgage on the land was not extinguished because the Evacuee Interest (Separation) Act had no application to it, the land being not evacuee property. Regarding the form of the suit, the Court held that in the peculiar circumstances the suit for possession was maintainable but that possession could be delivered to the owner only on payment of the proportionate mortgage money and he found that the proportionate amount would be Rs. 1,238. In the result, the Court decreed the plaintiff's suit for possession on payment of Rs. 1,238. Against that decree both parties appealed, but the appellate Court dismissed both the appeals. The defendants-mortgagees then filed a second appeal in this Court while cross-objections were preferred on behalf of the plaintiff. Both these were heard together by Shamsheer Bahadur, J., sitting alone. At that stage it was brought to the notice of the learned Judge on behalf of the appellants-mortgagees that sometime in 1945 Diwan Chand plaintiff had made an application for the redemption of the suit land under the Redemption of Mortgages Act, 1913, and that the Collector had, by his order, dated the 16th July, 1945, dismissed that application and as no suit had been brought to set aside that order within a period of one year, the claim of the plaintiff was barred by time, the submission being that the present suit was a suit to set aside the order of the Collector dismissing the plaintiff's petition for redemption and as such it was governed by article 14 of the Limitation Act which provides a period of one year for such a suit. This contention prevailed and the learned Judge held that Diwan Chand's claim for the possession of the land in suit was barred by time. The mortgagees' appeal was consequently allowed by the learned Judge and the plaintiff's suit ordered to be dismissed. The cross-objections of course failed. The

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Dewan Chand learned Judge, however, granted the plaintiff a certificate
 v. of fitness for a further appeal and it is on that certificate
 Raghbir Singh that the present appeal has been brought on behalf of
 and others Diwan Chand.

Dulat, I.

Mr. Aggarwal admits that Diwan Chand had made an application under the Redemption of Mortgages Act and that application had been dismissed in July, 1945, and he concedes that if the present suit be considered a suit to set aside the order of the learned Collector, then it is barred by time. His contention, however, is that the present suit is not one for setting aside the order of the Collector but is merely a suit to establish the plaintiff's right in the land and is not at all governed by article 14 of the Limitation Act, the suit being otherwise within the period of limitation as a suit for redemption or a suit for possession. In support of this contention Mr. Aggarwal points out that the Collector did not decide anything when he dismissed the application but merely said that the questions arising in the case were too complicated to be decided by him and that they should be decided in the civil Court and that, in the circumstances, it is impossible to suggest that by bringing the present suit the plaintiff is seeking to avoid or get rid of any order made by the Collector. I think there is force in this contention. The Redemption of Mortgages Act provides a summary remedy to a mortgagor who can, if he is 'entitled to institute a suit for redemption', apply to the Collector 'that his mortgage be redeemed' and 'he be put in possession'. Under section 9 of that Act, 'if the mortgagee raises objection on any ground other than the amount of the deposit, or if the petitioner is not willing to pay the sum demanded by the mortgagee', the Collector has two courses open to him. He can either 'for reasons to be recorded dismiss the petition' or 'make a summary inquiry regarding the objection raised by the mortgagee or regarding the sum due'. In the present case the Collector made no summary inquiry regarding the objections raised by the mortgagee. The objections were that the mortgagor was asking for partial redemption and should, in any case, be required to pay the entire mortgage money which was more than Rs. 5,000, and the Collector on those objections held that the questions raised were too complicated for him to settle. He.

therefore, dismissed the petition. Section 12 of the Redemption of Mortgages Act says—

“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.”

Mr. Aggarwal agrees that the Collector's order dismissing the petition was in law conclusive but it was 'subject to the result of a suit to establish his rights' and says that the present is such a suit. Section 12 does not require such a suit to be filed within one year or for that matter within any particular time, so that the suit is left to be governed by the provisions of the Limitation Act. The submission, which found favour with the learned Single Judge, was that every suit instituted 'to establish his rights' would be a suit to set aside the order made by the Collector and would consequently be governed by article 14 of the Limitation Act which provides a period of one year for a suit "to set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for", which runs from 'the date of the act or order'. Mr. Aggarwal says that this period of one year mentioned in article 14 of the Limitation Act governs only a suit which is in substance a suit to set aside an order made by an officer but has nothing to do with a suit which is merely brought to establish a right without requiring any order to be set aside. The controversy, therefore, is reduced to the question, whether every suit brought by a mortgagor to establish his rights after his application under the Redemption of Mortgages Act has been dismissed, is a suit to set aside the order of the Collector irrespective of the Collector's reasons for the dismissal of the application. The learned Single Judge appears to have held that every such suit would be a suit to set aside the Collector's order and, therefore, governed by Article 14 of the Limitation Act and he has in this connection referred to some decisions of the Lahore High Court and, in particular, to *Gangu v. Maharaj Das* (1), and *Prabhu Mal v. Chandan* (2). It appears, however, that a later Full Bench decision

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(1) I.L.R. (1934) 15 Lah. 389.

(2) A.I.R. 1938 Lah. 638.

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of the same Court in which this matter was more thoroughly considered, namely, *Tulsi Das v. Diala Ram* (3), was not brought to the notice of the learned Judge. This controversy appears to have gone on for some time in the Lahore High Court and was settled, if that is the right expression, by the Full Bench decision in *Tulsi Das v. Diala Ram* (3). Prior to the year 1929 some of the Judges appear to have thought that every kind of order made by a Collector disposing of an application under the Redemption of Mortgages Act was a final order and it had necessarily to be set aside before the mortgagor could obtain any other relief, and to have it set aside the suit must be brought within one year. This view was modified by a Division Bench consisting of the Chief Justice and Broadway, J., in *Asa Ram v. Darba Mal* (4), when Broadway, J., held that if a Collector rejects an application under section 9 of the Redemption of Mortgages Act without going into the merits of the dispute and does so on the ground that the dispute cannot be summarily settled, the order amounts to a "denial of jurisdiction" and it is not necessary in such a case to have the Collector's order set aside and article 14 of the Limitation Act has no application to any suit that the mortgagor may subsequently bring. The facts of that case were very similar to the present case and the Division Bench held that a suit brought by the mortgagor to establish his rights need not be brought within one year as the Collector's order did not need to be set aside. The correctness of this view was doubted by another Division Bench, to which the learned Single Judge has referred, *Prabhu Mal v. Chandan* (2). This led to the Full Bench in *Tulsi Das v. Diala Ram* (3), consisting of Tek Chand, Din Mohammad and Beckett, JJ. One of the questions for consideration before the Full Bench was whether the decision in *Asa Ram v. Darba Mal* was correct. Tek Chand, J., found that the decision was perfectly correct but that the basis of the decision was too widely stated, namely, that in every case, where the Collector's order is not on the merits, article 14 of the Limitation Act would not apply. Tek Chand, J., found that there could be many grounds for the dismissal of a petition under the Redemption of Mortgages Act and the order of dismissal

(3) A.I.R. 1943 Lah. 176.

(4) A.I.R. 1929 Lah. 513.

could be made by the Collector without going into the merits of the dispute such as, the dismissal of a petition for default of the mortgagor and such an order would have to be set aside before the aggrieved party could obtain any relief through a suit and the suit would, therefore, have to be brought within one year. He held, however, quite clearly that in circumstances like those arising in *Asa Ram v. Darba Mal*, where the Collector expressly says that the controversy is too complicated for him to settle and he therefore requires the parties to go to a civil Court, there is nothing requiring to be set aside and the mortgagor's suit to establish his rights need not be brought within one year. This is what Tek Chand, J., said in that connection—

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“**If the Collector [as in *Asa Ram v. Darba Mal* (4), or *Prabhu Mal v. Chandan* (2)] had declined to proceed with the enquiry under the Act because in his opinion the matter was too complicated and should be settled in the civil Court and for this reason he has dismissed the petition, it is difficult to see how a suit under section 12 would lie.”

Beckett, J., substantially accepted this line of reasoning and said—

“**I think that these make it sufficiently clear that the question and the answer were both directed to those suits under section 12 in which it is being sought to establish that the order of the Collector is erroneous and not to suits in which the order of the Collector is being accepted without further question”,

and a little later—

“**the applicability of article 14 to suits which are brought in consequence of such an order is entirely dependent on the question whether the suit is in substance to set aside some decision of the Collector on which an order granting or rejecting a summary remedy is based.”

The third learned Judge, Din Mohammad, J., was not entirely in agreement with this reasoning but it is unnecessary to consider his views, as he was in minority.

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Apart from authority, which seems to be in favour of Mr. Aggarwal's submission, a consideration of the language of article 14 of the Limitation Act leaves little doubt that the period of one year is prescribed only for a suit "to set aside an order of an officer of Government" and cannot apply to a suit which does not seek the setting aside of any such order. In the present case, the suit is simply to establish the plaintiff's right in the land which, assuming that it is a suit in view of section 12 of the Redemption of Mortgages Act, is not required by Section 12 to be brought within one year. I quite appreciate Mr. Roop Chand's suggestion that if in substance the suit cannot proceed in the face of the Collector's decision, then it would be necessary to claim that the Collector's decision be set aside but, looking to the substance of the matter, it is clear that the Collector made no decision or order which stands in the way of the present suit. On the other hand, as pointed out by Beckett, J., in the Full Bench case, the suit is in obedience to the Collector's decision. Mr. Roop Chand contends that we should look at the final order of the Collector which was an order dismissing the petition of the mortgagor and, unless that dismissal is set aside, the plaintiff as mortgagor can obtain no relief in his suit. This argument confines itself to the form of the Collector's decision and entirely ignores its substance. I do not see any justification for adopting such a one-sided view. The Collector obviously decided nothing against the present plaintiff and, on the other hand, directed that the matter be settled in the Civil Court. No suit to set aside the Collector's order was, therefore, necessary and the present suit must be considered a simple suit to establish the plaintiff's right in the land. It is not, therefore, a suit under article 14 of the Limitation Act. On this conclusion, it is obvious that the decision of the learned Single Judge cannot be sustained.

On behalf of the respondents, Mr. Roop Chand then urged that the form of the present suit was defective in so far as it was in reality a suit for redemption but was not brought in the proper form. This matter was considered by the trial Court and the learned Senior Subordinate Judge and both were satisfied that on the peculiar facts of the case appropriate relief could be granted to the plaintiff by ordering possession to be given

to him on payment of the mortgage money in spite of the fact that in form the suit was not one for redemption, and I see no justification for holding that because of this slight defect in form proper relief should not have been granted.

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Nothing else is urged in support of the decision of the learned Single Judge. I would, therefore, allow this appeal, set aside the order dismissing the plaintiff's suit and restore the decree granted to him by the learned Senior Subordinate Judge. Considering the circumstances, however, I would leave the parties to bear their own costs.

R. P. KHOSLA, J.—I agree.
B.R.T.

Khosla, J.

LETTERS PATENT APPEAL

Before A. N. Grover and S. K. Kapur, JJ.

HANUMAN PARSHAD,—*Appellant*

versus

RUP NARAIN AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 6-D of 1962.

Limitation Act (IX of 1908)—Arts. 142 and 144—Transfer of Property Act (IV of 1882)—S. 111(g)—Landlord and tenant—Tenant holding over parting possession to third party—Third party denying the title of the landlord—Tenant continuing making payment of rent to the landlord—Landlord—Whether precluded from determining the lease—Rent Restriction laws—Whether bar such determination—Possession of the third party—Whether ripens into title after 12 years.

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Held, that if a tenant, during a current lease, is dispossessed by a third party, time does not commence to run against the landlord until the expiration of the lease, but when the lease has expired and the tenant is holding over with the landlord's consent and he loses the possession of the property to a third party who claims to be in adverse possession, the landlord is not precluded from determining the tenancy. If the landlord is in a position to determine the tenancy and sue the third party in ejectment, the landlord's right to sue the trespasser will be barred after twelve years of possession of the trespasser. The fact that the tenant continues to pay the rent of