

Before S. P. Goyal & J. V. Gupta, JJ.

KISHAN SINGH,—Appellant.

versus

MITHU SINGH AND OTHERS.—Respondents.

Regular Second Appeal No. 143 of 1976.

July 10, 1984.

Redemption of Mortgages (Punjab) Act (II of 1913)—Sections 4, 9, 10 and 12—Limitation Act (XXXVI of 1963)—Article 100—Application for redemption of mortgage under section 4—Section 9 requiring the Collector to hold a summary inquiry—Collector, however, making an elaborate inquiry and dismissing the application on merits—Order of dismissal—Whether could be said to be without jurisdiction—Suit for setting aside the said order—Limitation for filing such a suit.

Held, that if the Collector had the jurisdiction to make a summary inquiry, then simply because that he has made the inquiry a little elaborate, does not render his order to be without jurisdiction. Section 9 of the Redemption of Mortgages (Punjab) Act, 1913 does contemplate that if any objection is raised on behalf of the mortgage, the Collector may make a summary inquiry regarding the objection raised by the mortgage and under section 10, thereof, if on inquiry regarding the objection so raised, the Collector is of the opinion that it bars redemption or has a sufficient cause for not proceeding further with the petition, he shall dismiss the same. The order of the Collector passed under the said provision of the Act is within jurisdiction. The order passed by the Collector dismissing the application on merits cannot be said to be without jurisdiction merely because he made an elaborate inquiry. The Collector had the authority to make a summary inquiry and on that inquiry, even if it be an elaborate one, the order passed by him on merits is well within the scope of the Act and hence within jurisdiction. That being the position of law, to get such an order set aside, the suit must be filed within one year of its passing and a suit filed beyond that period will necessarily be barred by time in view of the provisions of Section 12 of the Act read with Article 100 of the Limitation Act, 1963.

(Paras 4 & 7)

Kaka Singh v. Hazura Singh and others, 1982 P.L.J. 134.

OVERRULED

Case referred by a Single Judge Hon'ble Mr. Justice J. V. Gupta to the larger Bench on 28th October, 1983 for the decision of an

important question of law involved in the case. The larger Bench consisting of the Hon'ble Mr. Justice S. P. Goyal, The Hon'ble Mr. Justice J. V. Gupta, finally decided the case on 10th July, 1984.

Regular Second Appeal from the order of the Court of Shri Dev Raj Saini District Judge Faridkot dated the 15th day of December, 1975, reversing that of Shri Dina Nath Sub-Judge Ist Class, Gidderbaha, dated the 5th Day of May, 1973, and passing a preliminary decree under Order 34, Rule 7 C.P.C. for possession by redemption of 26 kanals 12 marlas of land comprising of Rectangle No. 81 and Rect. No. 119 in

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favour of the plaintiff-appellant and against the defendant-respondents, on payment of Rs. 440 and directing the plaintiff to deposit the said amount of Rs. 440 for payment to the defendants within two months from that date and further dismissing the suit regarding the remaining 9 kanals 16 marlas of land comprising of Rect. No. 81 and leaving the parties to bear

17/2(3—7)18/2(3—7)19/2(3—2)
their own costs.

K. S. Doad, Advocate, for the Appellant.

Acchra Singh with T. S. Grewal, Advocates, for the respondents.

JUDGMENT

J. V. Gupta, J.

(1) This case came up for hearing before me sitting singly earlier, but since the question involved was not free from difficulty and was likely to arise in many cases, it was thought in the fitness of things that the matter be decided by a larger Bench. It is in these circumstances that this case has come up before this Division Bench.

(2) The only point to be determined in this appeal by us is as to whether the order of the Collector (Exhibit P. 4), dated 20th August, 1968, whereby he dismissed on merits the application filed by the plaintiff-mortgagor under section 4 of the Redemption of Mortgages (Punjab) Act, 1913 (hereinafter referred to as 'the Act'), holding that the applicant (plaintiff) had failed to prove that

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he was the *mortgagor* qua the land, in dispute, was an order without jurisdiction or with in jurisdiction. It is not disputed and is a common case of the parties that if the said order of the Collector was within jurisdiction, then the suit must be filed within one year thereof for the setting aside of the said order and in case it is held to be without jurisdiction, then the necessity of getting the same set aside as such did not arise.

(3) To recapitulate, the facts are that on June 4, 1923, Bahal Singh mortgaged 37 *kanals* 10 *marlas* of land to Harnam Singh (now deceased) for Rs. 440. Mutation in this behalf, Exhibit P.1, was sanctioned in the name of the said Harnam Singh. After the death of Bahal Singh, the estate was mutated in the name, of his widow Shrimati Mallan,—*vide* mutation sanctioned on May 29, 1941, copy marked, Exhibit P.2. The aforesaid Shrimati Mallan made a gift of her share in the joint estate to Mithu Singh,—*vide* gift deed dated April 8, 1958, copy marked, Exhibit D.1. Thus, the plaintiff Mithu Singh became the mortgagor and Harnam Singh (deceased), the mortgagee. The present suit was filed for possession by way of redemption of the land measuring 36 *kanals* 8 *marlas*. The suit was contested *inter alia* on the ground that the mortgaged land was never gifted by Shrimati Mallan to Mithu Singh, plaintiff, as alleged. It was also pleaded that the plaintiff was estopped from filing the suit because the two applications made by him to the Collector for redemption of the land had been dismissed. It was further pleaded that the suit was barred by limitation. The trial Court found that since the plaintiff had not filed the suit within one year of the order of the Collector dated August 20, 1968, Exhibit P.4, the suit was barred by time. It was further found that the plaintiff had not been able to prove that he was the mortgagor, as alleged. Consequently, the plaintiff's suit was dismissed. In appeal, the learned District Judge reversed the said findings of the trial Court and came to the conclusion that the suit was within limitation as the order of the Collector, Exhibit P.4, was without jurisdiction and that no suit was necessary to be filed to set aside the same. The other finding of the trial Court was also reversed as it was held that the plaintiff was a mortgagor, as alleged in the plaint. As a result, the plaintiff's suit was decreed and a preliminary decree under Order XXXIV rule 7, Code of Civil Procedure, was passed. Dissatisfied with the same, the defendant, came up in second appeal to this Court.

(4) The main argument raised on behalf of the plaintiff-respondent is that the Collector under section 9 of the Act had to make a summary inquiry regarding objections raised by the mortgagee, but since the inquiry had been an elaborate one, the order of the Collector, therefore, becomes without jurisdiction. We are unable to accept this contention of the learned counsel for the plaintiff-respondent. If the Collector had the jurisdiction to make a summary inquiry, then simply because he has made the inquiry a little elaborate, does not render his order to be without jurisdiction. As observed earlier, Section 9 of the Act does contemplate that if any objection is raised on behalf of the mortgagee, the Collector may make a summary inquiry regarding the objection raised by the mortgagee and under Section 10 thereof, if on inquiry regarding the objection so raised by the mortgagee, the Collector is of the opinion that it bars redemption or has a sufficient cause for not proceeding further with the petition he shall dismiss the same. Thus the order of the Collector (Exhibit P4) was passed under the said provisions of the Act and, hence was within jurisdiction. The matter might be different if the Collector did not decide the application on merits and rejected the same being premature as was the case before the Full Bench reported as *Chanan Singh vs. Shrimati Majo and Shrimati Banti*, (1).

(5) The matter does not rest here as strong reliance was placed by the learned counsel for the plaintiff-respondent on a Single Bench judgment of this Court reported as *Kaka Singh v. Hazura Singh and others*, (2). In that case the Collector dismissed the application of the mortgagor being barred by time. Such an order of the Collector was held to be a nullity and the learned Judge held that the same could be safely ignored and the question of filing a suit to set aside that order did not, therefore, arise. We are of the considered view that the said view taken by the learned Judge was erroneous as the order of the Collector could not be said to be without jurisdiction and unless that is so it cannot be said to be a nullity. There can be no gain-saying that the Collector was competent to decide as to whether the application under Section 4 of the Act was within limitation or not and once it is so the Collector had

(1) 1976 P.L.J. 411.

(2) 1982 P.L.J. 134.

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the jurisdiction to decide the application but dismissed the same erroneously as barred by time. Under the circumstances therefore, it could not be held that the order was a nullity and could be ignored in-as-much as no suit need be filed within one year thereof to get the said order set aside. Thus the said judgment in the process has to be over-ruled.

(6) The other judgment relied upon by the learned counsel for the plaintiff-respondent is *Amar Singh vs. Mehar Singh and another* (3). However, that case is distinguishable as in that case the learned Judge held that the Collector did not pass the order as such on merits as he merely accepted the report of the Tehsildar, **and, therefore, he could not be held to have decided the application as such himself.** However, it was observed therein that if the Collector had decided the application for redemption on merits, then the principle of law as enunciated in *Gangu and others vs. Mahanraj Chand and others*, (4) (FB) would be applicable and the suit had to be filed within one year of the decision of that application. In any case no proposition of law as is being canvassed by the learned counsel was laid down by the learned Single Judge in that case. The appeal was decided on the peculiar facts of that case and even **the counsel has not been able to bring to our notice the order of the Collector** that was passed in that case to appreciate the exact nature of the order passed.

(7) **In passing the learned counsel for the respondent referred to *Lachhman Singh vs. Natha Singh through Harnam Singh and others*, (5) (Full Bench), to contend that the powers of a tribunal of special jurisdiction are circumscribed by the statute under which it is constituted. Thus argued the learned counsel that such Tribunals must act within their powers and so long as they do so, their orders whether right or wrong cannot be challenged except in the manner and to the extent prescribed in the statute and they cannot be questioned in Courts of ordinary jurisdiction. But where, and in far as, their actions are in excess or in contravention of the powers conferred on them, they are *ultra vires* and are of no legal effect and obviously cannot claim immunity. There can be no dispute to the said proposition of law. In the present case it could not**

(3) 1981 P.L.J. 20.

(4) A.I.R. 1934 Lahore 384.

(5) A.I.R. 1940 Lahore 401.

be successfully argued that the order passed by the Collector dismissing the application on merits was without jurisdiction because he had exceeded his jurisdiction by making an elaborate inquiry. **Moreover, it will depend upon the language of each statute as to whether the particular order is within the scope of the Act or not, and, therefore, no general rule of law as tried by the learned counsel to be spelled out from the aforesaid Full Bench authority can be laid down.** The Collector in the present case had the authority to make a summary inquiry and on that inquiry, even if it be an elaborate one, an order is passed by him on merits, such an order is well within the scope of the Act and hence within jurisdiction. That being the position of law to get such an order set aside, the suit must be filed within one year of its passing and a suit filed beyond that period will necessarily be barred by time in view of the provisions of Section 12 of the Act read with Article 100 of the Limitation Act.

(8) In this view of the matter the appeal succeeds, the judgment and decree of the lower appellate Court are set aside and that of the trial Court dismissing the plaintiff's suit are restored with costs.

S. P. Goyal J—I agree

N. K. S.

Before J. V. Gupta, J.

UNION OF INDIA AND ANOTHER,—*Petitioners.*

versus

SURINDER CHAND MEHRA AND OTHERS,—*Respondents.*

Civil Revision No. 534 of 1983.

July 16, 1984.

Constitution of India 1950—Articles 299 & 300—Code of Civil Procedure (V of 1908)—Section 79—East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Premises rented out to the Union