

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Anwar Zaheer Jamali  
Mr. Justice Umar Ata Bandial

**CIVIL APPEAL NO. 1440 OF 2007**

(On appeal from the judgment/order dated 16.05.2001 passed by  
Lahore High Court, Lahore, in Civil Revision No.713-D/1989)

Dausa & others	...	...	Appellants.
	Versus		
Province of the Punjab, etc.	...	...	Respondents.

For the appellants	:	Mr. S.M. Tayyab, ASC.
For respondents (1-2)	:	Mr. Muddassar Khalid Abbasi, DAG Pb. Mr. Zafar Iqbal, Patwari Halqa.
For the respondents (4-10 & 13-16)	:	Mr. Muhammad Munir Peracha, ASC.
L.Rs. of Respondents (3, 11, 12)	:	<i>Ex-parte.</i>
Date of hearing	:	16.06.2015.

**JUDGMENT:**

**UMAR ATA BANDIAL, J. –** The leave granting order dated 31.07.2007 notes the appellants’ (“**plaintiffs**”) contention that their predecessors mortgaged their land in favour of evacuee mortgagees vide registered mortgage deed dated 22.12.1882 (Exb.P-16). This transaction was duly entered in the revenue record vide mutation No.4 dated 05.05.1887. However, by a clerical mistake, the plaint in the suit has pleaded such mortgage to have been created in the year 1914. Therefore, the claimed redemption of mortgage vide mutation No.2 dated 17.06.1913 was rejected by the learned Appellate and the learned Revisional Courts as being contradictory and destructive of the plaintiffs’ claim. Accordingly, leave was granted to consider, *inter alia*, the effect of the registered mortgage deed dated 22.12.1882 (Exb.P-16) upon the outcome of the appellants’ plea for declaration of title of the mortgaged land.

2. The plaintiffs filed a suit on 04.11.1986 in the Court of Senior Civil Judge, Sargodha seeking declaration of title in respect of land measuring 71 Kanals

3 Marlas situate in village Jhumat Ranjhayan Wala, Tehsil Bhalwal, District Sargodha (**'suit land'**). The plaintiffs are the progeny of Taja son of Karam and of Babal son of Sahba (grandson of Karam). Taja, Sahba and Samand sons of Karam mortgaged the suit land to evacuee mortgagees under a registered deed of mortgage dated 22.12.1882. Rather implausibly, the plaint claims that the said mortgage was created in the year 1914-15 but on the contrary, it rightly claims that this mortgage was redeemed vide mutation No.2 dated 17.06.1913. However, redemption of the mortgage was not reflected in the periodical revenue record. The mutation No.1999 dated 12.04.1971 (**"impugned mutation"**) was entered to record the resumption of the mortgaged suit land by the Central Government under the Displaced Persons (Land Settlement) Act, 1958. The prayer in the suit is for the impugned mutation to be declared illegal and void. The judgment of the learned Trial Court dated 25.06.1988 upheld the redemption of mortgage by the plaintiffs but dismissed their suit as being time barred for the relief prayed. The learned Appellate Court, however, noticed the contradiction in the plaint about the date of redemption of the mortgage being prior to the date of its creation. Vide judgment dated 12.12.1988 the learned Appellate Court dismissed the plaintiffs' appeal by holding that a mortgage cannot be redeemed before it is created; therefore the case set up in the plaint was self destructive. This was affirmed on 16.05.2001 by the learned Revisional Court which also held that the mutation No.1999 dated 12.04.1971 was valid.

3. The learned counsel for the appellants has referred to Exb.P-16 which is a copy of the mortgage deed dated 22.12.1882 registered in the record of the Sub-Registrar, Bhera, executed by Taja, Sahba and Samand, the three sons of Karam, in favour of evacuee mortgagees. The corresponding mutation No.4 dated 05.05.1887 incorporating the mortgage in the revenue record is also part of Exb.P-16. Although the said document was exhibited on record by the plaintiffs yet they made no effort before any of the learned three Courts below to amend the plaint in order to correct the pleaded date of mortgage of land by their predecessors. However, finally by an application bearing C.M.A. No.3811-L of 2006 filed before this Court under Order V

Rule 2(8) of the Supreme Court Rules, 1980, the plaintiffs have sought to amend the plaint for incorporating therein the correct date of creation of mortgage on the basis of the said Exb.P-16.

4. The written statement filed in the Trial Court by the respondents (**"defendants"**), who are respectively the Provincial Government and the successors of the Settlement and Rehabilitation Commissioner, namely, the Notified Officer (Senior Member, Board of Revenue, Government of Punjab), acknowledges/admits that mortgage of half the suit land was indeed redeemed vide mutation No.2 dated 17.06.1913, which is duly reflected in the *Jamabandi* for the year 1915-18. The written statement further states that the remaining half of the suit land has remained subject to mortgage. It is averred that after the lapse of 60 years, the right of redemption of the mortgage has become time barred; consequently, the suit land has vested in the government. Therefore, the impugned mutation No.1999 dated 12.04.1971 is rightly recorded.

5. The learned counsel for the parties have been heard. The learned counsel for the appellants/plaintiffs has also filed written arguments to elaborate his submissions. The learned Assistant Advocate General has filed a concise statement on behalf of the Provincial Government which aptly explains the position on record. These materials and the record have been perused.

6. A reading of the record and the three judgments of the learned Courts below reveals the cursory manner in which the parties, namely, the plaintiffs on the one hand and the government defendants on the other hand, dealt with the controversy in issue before the learned Trial Court. Quite apart from the factual error in the pleadings which is sought to be rectified by an amendment application filed by the plaintiffs before this Court, the pleadings of the parties are silent about, *inter alia*, the terms of the mortgage, tracing the plaintiffs' succession from the three mortgagors, the particulars and the area of the mortgaged land that is in their possession. Although the written statement by the Provincial Government specifically mentions that only half of the mortgaged suit land stands redeemed but possession of the entire suit land by the plaintiffs is not denied. However, no

evidence on the particulars of the redeemed land is available on record. The defendants were proceeded *ex-parte* by the learned Trial Court before recording of evidence.

7. The submissions made by learned counsel before us, the evidence on record and the written submissions filed by the learned counsel in Court establish consensus between the parties that in 1882 three sons of Karam, namely, Taja, Sahba and Samand jointly mortgaged their land in favour of evacuee mortgagees (Ex.P-16). The successors of Babal son of Sahba and the successors of Malli son of Taja are plaintiffs in the suit. Sahba had three other sons, namely, Ditta, Jallo and Shabul, who died issueless; so also did Samand son of Karam, the third mortgagor. This detail is available from the pedigree table of the plaintiffs attached to the statements filed in Court by the learned counsel for both the parties before us. The redemption mutation No.2 dated 17.06.1913 records redemption by Ditta, Jallo and Shabul, the issueless sons of Sahba. According to the said mutation, the predecessors of the plaintiffs, namely, Babal and Malli did not redeem their share of the suit land under mortgage and nor did Samand, the third mortgagor. Accordingly, there is another error in the suit, namely, whilst the plaintiffs claim rights pursuant to redemption mutation No.2 dated 17.06.1913, in fact it is the shares of Ditta, Jallo and Shabul, who are not plaintiffs, that have been redeemed under the said mutation. This is significant because the plaint does not claim the plaintiffs to be the only heirs of the redeeming mortgagors. In the resulting scenario, the plaintiffs lack *locus standi* for the relief of declaration of title of the redeemed land prayed in the suit. Also, the plaintiffs as successors of the non-redeeming mortgagors have not sought redemption of their share in the mortgaged land. This appeal, therefore, *prima facie*, lacks potential for any relief.

8. There are, however, two legal developments that have taken place during the pendency of the *lis*. These impact the outcome of the controversy. It is noted that the impugned mutation No.1999 dated 12.04.1971 has by operation of law resumed the proprietary rights of the mortgaged land in favour of the government. With regard to such resumption of land, the judgment of this Court

given in the case of **Samar Gul v. Central Government** (PLD 1986 SC 35) has laid down that under the Displaced Persons (Land Settlement) Act, 1958 the proprietary interest that is liable to transfer in favour of the Central Government is the right of evacuee mortgagees in mortgaged land and not the ownership rights of such land. It is also held that a memorandum dated 08.12.1959 issued by the Chief Settlement and Rehabilitation Commissioner constitutes an acknowledgment of the existence of a mortgage of land to evacuee persons within the terms of Section 19 of the Limitation Act, 1908. This communication has been held to renew the period of limitation for redemption of mortgage under Article 148 of the Limitation Act, 1908 by another 60 years. The said memorandum directs the field officers to issue notices to Muslim landowners/mortgagors to redeem their mortgages or else the evacuee mortgagee rights in their mortgaged land would be put to auction. The consequence of the ruling in **Samar Gul's** case (supra) is that straightaway the impugned mutation resuming title of the mortgaged suit land in favour of the government is rendered illegal. At best only the evacuee mortgagee rights in the suit land could have been resumed. Consequently, the impugned mutation divesting the appellants/plaintiffs of their title in the suit land is illegal and void. However, the said title remains subject to the mortgagee interest in favour of the government.

9. In the light of the above facts, the Court has endeavored to construe the case of the parties in the light of the pleadings, available evidence on the record and the law applicable to the controversy which involves the interest of evacuee mortgagees. Due to a wrong date of creation of mortgage on the suit land given in the plaint, a reasonable factual plea in the suit based on the redemption mutation No.2 was rendered futile. It is noted that the document Exb.P-16 (comprising the registered mortgage deed dated 22.12.1882 and mutation No.4 dated 05.05.1887) clarifies the confusion about the creation of the mortgage and cures the contradiction in the suit. Moreover, Exb.P-16 is an admitted document by the respondents and belongs to the official record. It is therefore, both genuine and reliable. The actual date of creation of the mortgage which is evidenced by the document Exb.P-16 is consistent with the plea of mortgage of the suit land taken in

the plaint. The amendment application (C.M.A. No.3811-L of 2006) by the appellants/plaintiffs for incorporating the correct date of the mortgage in the plaint does not alter the nature of the case pleaded by the plaintiffs. The prayer for the incorporation of an undisputed fact is of a formal nature and brings factual clarity which promotes the fair adjudication of the controversy and the interest of justice. Compliance with the said criteria satisfies the principles for allowing amendment in pleadings even by the highest Court. [Ref: Ghulam Nabi vs. Nazir Ahmad (1985 SCMR 824); Secretary to Government (West Pakistan) vs. Abdul Kafil (PLD 1978 SC 264)]. The C.M.A. No. 3811-L of 2006 for the amendment prayed is accordingly allowed.

10. As a result of the amendment, the finding duly recorded by the learned Appellate Court and the learned Revisional Court that a self destructive case has been setup by the plaintiffs is rendered redundant. What remains in the field is the learned Trial Court's finding that the suit is time barred. It is contended on behalf of the appellants/plaintiffs that the registered mortgage deed (Exb.P-16) provides for repayment of the mortgage amount of Rs.500/- by 4 *Poh* 1937 (Jan, 1937). Ordinarily, the limitation period of 60 years under Article 148 of the Limitation Act, 1908 for redemption of mortgage reckoned from that date ends roughly in the year 1997. However, the legal rule laid down in Samar Gul's case (supra), the memorandum extends the limitation period for the redemption of a mortgage created in favour of evacuee mortgagees or their successors, the Settlement Commissioner/Notified Officer until 07.12.2019. Accordingly, a suit for redemption of the unredeemed land may competently be filed by the plaintiffs until that date.

11. With respect to half the mortgaged land that was redeemed by Ditta, Jallo and Shahbul, the three issueless sons of Sahba under the mutation No.2 dated 17.06.1913 (Exb.P-16), the plaintiffs have brought no evidence on the record to establish their *locus standi* as the only successors of the three issueless redeeming mortgagors. From the agreed pedigree table of the redeeming mortgagors that is available on record, it appears that the plaintiffs may have entitlement as collaterals

of the redeeming mortgagors. However, the impleadment of all entitled successors of the redeeming mortgagors in the suit, the ascertainment of the veracity of the entries in the cultivation column of *Intikhab Misl Bandobast* of the Mouza from 1911-1912 to 1962-1963 (Exb.P-1 to Exb.P-12) showing the possession of the mortgaged land with the successors of the redeeming mortgagors and deciding any third party interest that may have crept over the suit land would be necessary for adjudicating the title of the redeemed mortgaged land prayed in the suit. Since neither of the said aspects of the case have been dealt with by the learned Courts below, it is appropriate that the matter be remanded to the learned trial Court for deciding after allowing the parties to amend their pleadings, if desired and leading fresh evidence. This is without prejudice to our finding that according to the law declared in **Samar Gul**'s case (PLD 1986 SC 35) the impugned mutation No.1999 dated 12.04.1971 is illegal and void. The respondents are entitled to hold the interest of evacuee mortgagees in the suit land for which requisite correction shall be made in the relevant revenue record of Mouza in which the suit land is situate.

For the foregoing discussion, this appeal is partly allowed. No order as to costs.

J.

J.

Announced in Court at Islamabad,  
On **19.04.2016**.

J.

**APPROVED FOR REPORTING.**