

Ram Palhawan And Ors. vs Ummedi Ahir on 8 August, 1950

Equivalent citations: AIR1952ALL300, AIR 1952 ALLAHABAD 300

ORDER

Seth, J.

1. The applicants are defendants to a case started under Section 12. U.P. Agriculturists' Relief Act, for the redemption of a mortgage dated 13-2-1878. The application for redemption under Section 12 was filed some time in the year 1944. The claim for redemption was contested, inter alia, on the ground that it was barred by limitation. This plea was overruled by the Court of first instance and a decree for redemption was passed without any payment on the finding that the mortgage had been paid from the usufruct. The lower appellate Court has agreed with the conclusions of the trial Court and has dismissed the appeal. Aggrieved by this decision the defendants have come up in revision to this Court and the plea of limitation has been again urged in this Court.

2. It is obvious from the dates given above that the application for redemption was made more than sixty years after the date of the mortgage and the claim was, therefore, prima facie, barred by limitation.

3. The Courts below have, however, relied upon a Bench decision of this Court reported as Ram Prasad v. Bishambhar Singh, 1946 ALL. L. J. 175. Another subsequent ruling was cited before the learned Judge of the lower appellate Court as an authority for the proposition that Ram Prasad's case was not applicable to proceedings for redemption under Section 12, U. P. Agriculturists' Relief Act. The learned civil Judge, without applying his mind to what was decided in the subsequent case and without properly appreciating the import of the decisions in the two Oases cited before him, thought that the two decisions were opposed to each other and refused to follow the subsequent decision on the ground that the subsequent ruling, being the decision of a single Judge, could not be followed in view of the earlier Bench decision.

4. It was pointed out in Ram Prasad's case, (1946 ALL. L. J. 175) that the Transfer of Property Act contemplates two kinds of suits by a mortgagor and provides for them by two different sections, namely, Sections 60 and 62 of that Act and that while Section 60 provides for a suit for redemption, Section 62 contemplates a suit of a quite different nature, that is, a suit for possession otherwise than by redemption. It was found that the suit instituted in Ram Prasad's case was not a suit for redemption but that it was a suit for possession against a trespasser and that for such a suit limitation did not begin to run until the Court had declared what principal had remained due as on the date when the U. P. Debt Redemption Act came into force. It was not held in that case that the U.P. Debt Redemption Act gave a fresh start to the period of limitation even for a suit for redemption. This will appear from the following observations made in Ram Prasad's case :

"But what the plaintiffs came to Court for was first to ask the Court under Section 9, U. P. Debt Redemption Act to go through the formal steps of determining whether the mortgage had been paid off, and, assuming that it had been, of giving the plaintiffs a decree for 'recovery of possession' It is neither here nor there that on the way the plaintiffs met with an unexpected obstacle, namely, that their right as mortgagors was challenged altogether. But once that had been got out of the way, then the suit became nothing more nor less than a suit by the plaintiffs against the defendants as trespassers asking for recovery of possession."

It was also observed in that case that :

"Section 62, on the other hand, is in marked contrast to Section 60. Section 62 says that in the case of a usufructuary mortgage, the mortgagor has a right to 'recover possession' of the property when (in a case in which the mortgagee is authorised to pay himself the mortgage money out of the rents and profits of the property) the principal money is paid off. As we see it, that is not a case of redemption at all."

It is thus plain that the suit in Ram Prasad's case was not treated to be a suit for redemption but a suit for possession as against a trespasser.

5. Section 12, U.P. Agriculturists' Relief Act does not contemplate a mere application for possession. It expressly provides for an application to redeem a mortgage. Therefore, the possession that can be claimed under that section is possession by virtue of redemption and not otherwise. An application under Section 12, when contested, results in a suit for redemption and not in a suit for possession. The period of limitation for a suit for possession determined in Ram Prasad's case (1946 ALL. L. J. 175) is, therefore, not applicable to an application for redemption under Section 12, U. P. Agriculturists' Relief Act. If the application in the present case be treated to be an application for possession without asking for redemption, it must fail on the ground that it is outside the scope of Section 12, U.P. Agriculturists' Relief Act. It can be maintained as an application under Section 12, U. P. Agriculturists' Relief Act only as an application for redemption and not as an application for possession in the nature of a suit contemplated by Section 62, T.P. Act.

6. This distinguishing feature of Ram Prasad's case, (1946 ALL. L. J. 175) was clearly pointed out in Shafiq Uddin v. Lakhan Singh, 1949 ALL. L.J. 423. Ram Prasad's case was not dissented from in Shafiq Uddin's case. On the other hand it was said :

"The decision in Ram Prasad's case no doubt supports the contention that, where a suit is brought for possession on the allegation that the mortgage debt has been paid up it is not a suit for redemption and time begins to run from the date when the right to claim possession accrues. This case, however, has no application to the present case which is not a suit of this description. It is an application under Section 12, U. P. Agriculturists' Relief Act. Under this section only an application for possession by redemption can be made. Indeed this is the precise relief claimed in the application. The plaintiff applicant having chosen to put forward a claim for redemption cannot

take advantage of Ram Prasad's case."

It appears to me that either the learned Civil Judge has not taken the trouble of reading the two cases carefully and of trying to understand the principles upon which they are based, or that he has tried to get over the ruling in Shafiq Uddin's case by inventing that it is opposed to the ruling in Ram Prasad's case. Whether Ram Prasad's case has been correctly decided or not, Shafiq Uddin's case does not depart from it but merely distinguishes it as inapplicable to cases under Section 12, U. P. Agriculturists' Relief Act. It is Shafiq Uddin's case, and not Ram Prasad's case, that applies to the present case. In either case, the learned Civil Judge has acted illegally and with material irregularity in the exercise of his jurisdiction.

7. For the reasons indicated above, I allow this application in revision, set aside the decree of the lower appellate Court and order the application under Section 12, U. P. Agriculturists' Relief Act to be dismissed with costs to the defendants in all the Courts.