

Nabi Bakhsh vs Chaubey Puttu Lal on 1 April, 1954

Equivalent citations: AIR1954ALL607, AIR 1954 ALLAHABAD 607

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. A suit was filed in the court of the learned Munsif of Etawah for redemption of a possessory mortgage dated 9-7-1878, for a sum of Rs. 150/- executed by Jai Kishan Das in favour of Lachhman Das and Govind Das and for recovery of Rs. 700/-. The plaintiff claimed that during the continuance of the mortgage the mortgagees had committed acts of destruction and permanent injury to the mortgaged property inasmuch as they had cut down and removed seven trees and were, therefore, liable to pay Rs. 850/- as damages. After having given credit for the mortgage money, i. e., Rs. 150/-, he claimed that a sum of Rs. 700/- was payable to him.
2. The learned Munsif decreed the suit on payment of Rs. 9/-.
3. There was an appeal and the lower appellate court held that the mortgagees had cut down and removed certain trees and had thus caused damage to the extent of Rs. 344/-. After deducting the mortgage debt a decree for Rs. 194/- was passed in plaintiff's favour and the suit for redemption was also decreed.
4. There was a second appeal in this Court and before the learned single Judge a point was raised that by reason of the provisions of Section 25 of the U. P. Agriculturists' Relief Act no suit lay in the Civil Court and the plaintiff should have applied for redemption of the mortgage under Section 12 of that Act, and, as the principal sum secured was only Rs. 150/- under Section 10 the application was cognizable by the Collector. The learned Judge, however, overruled the contention and dismissed the appeal. He however, granted leave and a Letters Patent Appeal was filed which was referred to a Full Bench for decision.
5. The point for decision is a very short one, whether a suit of this kind, where the plaintiff seeks not only redemption of the mortgage but also damages for destruction and permanent injury to the mortgaged property can be said to be barred by the provisions of Section 25 of the Agriculturists' Relief Act. That section is as follows:

"No suit shall be brought in any court for any relief which can be obtained by an application under this chapter".

The question, therefore, is whether the suit brought in the court of the learned Munsif in this case was for any relief which could be obtained by an application under Section 12 of the Agriculturists' Relief Act.

6. It must be conceded that the Act does not provide for a decree for money being passed in favour of the plaintiff at the time of passing a decree for redemption. A reference to the various sections of this Act will make this abundantly clear. Section 12 provides for an application for redemption. Under Section 12 the applicant is required to deposit in court, at the time when he applies, the sum which he considers is due to the mortgagee. It was at one time held that Section 12 would apply only to cases where the applicant admitted that some money was due from him & the section did not apply to a case where the mortgagor claimed that the whole of the mortgage money had been paid off and nothing was due. This view, however, was ultimately not accepted and at present the law, as administered by this Court, is that an application for redemption can be filed under Section 12 by a mortgagor even if he does not admit that anything is due from him.

Section 13 then provides that, after the application had been duly presented and the deposit made, notice has to be issued to the mortgagee to show cause why redemption should not be allowed; Section 14 deals with a case where a mortgagee appears and accepts the money deposited in court; Section 15 with a case where on the date fixed the applicant does not appear and the mortgagee does not accept the money; and Section 16 applies to the large majority of cases where there is a dispute whether the applicant has a right to redeem and whether the amount deposited by him is sufficient or not.

In Section 16 it is provided that if the court finds that -

"..... the applicant is entitled to redeem, but must pay a larger amount than that deposited by him, the court shall order the applicant to deposit the balance within a fixed period. If the applicant fails to deposit the said balance, the Court shall reject his application. If the court finds that the applicant is entitled to redeem and that the amount deposited by him was sufficient or if it was not sufficient, the applicant has deposited the balance within the time fixed, it shall order that the mortgage be redeemed, that the money deposited be paid to the mortgagee and that the title-deeds, if any, in possession or power of the mortgagee shall be deposited in court and shall be delivered to the mortgagor."

From the above quotation, it would appear that all that the court has to see is whether the applicant has a right to redeem and whether the amount deposited by him is sufficient or not and, if sufficient amount is forthcoming for payment to the mortgagee, the application is granted and redemption is allowed. An order provided for in Section 16 of the Agriculturists' Relief Act is materially different from a decree for redemption passed under Order 24 of the Code of Civil Procedure. Section 16, of the Agriculturists' Relief Act, does not empower the court to pass a decree for money in favour of the

applicant who has applied for redemption under Section 12. The section is applicable only to a case where the mortgagor wants redemption of the mortgage on payment of the amount due to the mortgagee. Under Section 16 no decree for redemption as provided for in Order 34 Civil P. C. is passed though Section 27 of the Act provides that such an order shall be executed in the manner prescribed for execution of civil court decrees.

7. Section 76 of the Transfer of Property Act (Act No. IV of 1882) deals with the liabilities of a mortgagee in possession. The mortgagee in possession must not do any act which is destruc-

tive or permanently injurious to the mortgaged property. (Section 76(e)). If the mortgagee fails to perform any of the duties imposed upon him by the section, the mortgagee, when accounts are taken in pursuance of a decree under Chapter IV of the Transfer of Property Act, can be debited with loss occasioned by his failure. Section 76 makes it clear that the accounting between the mortgagor and the mortgagee has to be done at the time of redemption of the mortgage. Not only does a redemption decree passed under Order 34 of the Code provide for redemption of the mortgage but it also directs the mortgagee to pay to the mortgagor any loss caused to him for failure of any of the duties imposed on him under Section 76. The decree for redemption cannot be split up into separate and distinct reliefs passed by two courts, one for redemption and another for damages.

It cannot be said therefore that under Section 12 of the Agriculturists' Relief Act the plaintiff should have obtained an order for redemption and then filed a separate suit for damages for destruction or permanent injury to the mortgaged property. The question of accounting between the mortgagor and the mortgagee and after accounting what sum is payable by one to the other is an intimate and inseparable part of a decree for redemption under the Code of Civil Procedure. The Agriculturists' Relief Act, on the other hand, deals, as we have already said, with that simple type of case where there is no question of any breach of duty by the mortgagee and no loss is claimed to have been caused to the mortgagor for which he has to be compensated and where the only question is, what part of the mortgage debt has remained unpaid and whether the applicant can get an order for redemption of the mortgage.

As the Act confers a special jurisdiction it must be limited to the scope of the enquiry provided for under Section 16. It is, therefore, not within the jurisdiction of the Collector to enter into the question of a claim for waste, nor has he any jurisdiction to give a decree in favour of the mortgagor for recovery of any amount from the mortgagee. An order under Section 16 is not analogous to a decree for redemption under Order 34 of the Code of Civil Procedure.

8. We are, therefore, of the opinion that it was not possible for the plaintiff to split up the reliefs claimed by him into two separate and distinct reliefs one for redemption and another for damages one of which could be claimed by an application under Section 12 of the Agriculturists' Relief Act and the other by a suit under Section 60 read with Section 76, Transfer of Property Act. In the circumstances, it cannot be said that any relief claimed by the plaintiff could have been obtained by an application under Section 12 of the Agriculturists' Relief Act.

9. The appeal has no force and is dismissed with costs.