Mt. Chunai vs Ram Prasad And Ors. on 21 December, 1950

Equivalent citations: AIR1951ALL167, AIR 1951 ALLAHABAD 167

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Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. I have had the benefit of reading the exhaustive judgment of my brother Mushtaq Ahmad.

2. The facts are fully set out in the judgment of my learned brother, and it is, therefore, not necessary for me to deal with them in detail. The plaintiffs' suit was for redemption of a possessory mortgage dated 1-9-1881, executed, by Kanhai, Mahabir and Mahadeo in favour of Hathi Prasad. The mortgagors are all dead and their heirs and legal representatives, Bishwanath Prasad, Ajodhya Prasad and Lachmi Prasad, sold the property on 19-7-1941, to Ram Prasad and others, plaintiffs The suit was filed, by the legal representatives of the mortgagors as well as by the transferees for redemption of the mortgage. The mortgage deed provided that the amount borrowed would be paid to the mortgagee within a period of six months and, if the amount was not so paid, the mortgage deed would be deemed to be a sale deed and the mortgagee would become the owner of the property. The amount was not paid to the mortgagee and the mortgagee remained in possession but he never filed any suit for foreclosure.

3. The mortgagee, Hathi Prasad, died, and his widow, Sm. Sumrekha, purported to transfer the property to her son-in-law Baleshwar Prasad under a mortgage deed dated 19-9-1917. In the mortgage deed she described herself as--the full owner of the property and no reference was made to the mortgage deed of 1-9-1881. On-31-1-1924, Bhairon Prasad, the grandson of Kanhai, one of the mortgagors, filed an application for redemption under Section 83, T. P. Act, but the application failed and was dismissed on 31-5-1924. On 24-7-1925, Sm. Sumrekha sold the property to Baleshwar Prasad. The recital in the sale deed was that she had purchased the property under the document dated 1-9-1881. The suit for redemption was filed on 4-8-1941.

4. The point for decision is whether Article 134, Limitation Act, applies to the suit and, if so, whether the suit was within time.

5. Article 134 applies to a suit to recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration. The period of limitation is twelve years and the starting point of limitation, previous

to the amendment of the article on 1-1-1929, by the Amending Act I [1] of 1929, was the date of transfer. Before, however, the period of twelve years expired from 19-9-1917, the date when Sm. Sumrekha had purported to mortgage the property to Baleshwar Prasad, the article was amended and the starting point of limitation was made "the date when the transfer became known to the plaintiffs." The suit, I have already said, was filed on 4-8-1941. The burden of proving the date when the plaintiffs came to know of these transfers was on the plaintiffs. Ram Prasad plaintiff, as I have already said, purchased, the property on 19-7-1941. The lower appellate Court recorded the finding that Ram Prasad had no knowledge prior to his purchase in 1941 and his transferors had no knowledge of the fact that Sm. Sumrekha had mortgaged the disputed house or sold it asserting an absolute title therein. On the finding recorded by the lower appellate Court and the starting point of limitation being twelve years from the date of the knowledge of the transfers the suit was clearly within time as was held by the lower Courts. The learned single Judge before whom the case came up for decision was of the opinion that the finding of the lower appellate Court that Bhairon Prasad, the mortgagor's legal representative, had no knowledge of the transfer of absolute title by Sm. Sumrekha was perverse and should be set aside by this Court., For the reasons given by my brother Mushtaq Ahmad I am not prepared to interfere with the findings of fact recorded by the lower Court.

6. The point for the decision of which the learned single Judge referred this case to a Full Bench was whether a transferee must prove his good faith before he can rely on Article 134, Limitation Act. It is not necessary for me to set out the various amendments that have been made to the provision fixing the period of limitation for suits for possession filed against a transferee of the property from a trustee or a mortgagee in the various Limitation Acts from the first Act XIV [14] of 1859 to Act IX [9] of 1908 as amended by Act I [1] of 1929. Upto the year 1871 (Act IX [9] of 1871) it was required that the transferee should not only be a purchaser for value but also a purchaser in good faith. The words "in good faith" were omitted in Act XV [15] of 1877. The scheme of the Limitation Act is to fix a period of limitation for various types of suits and applications and in each Article the starting point from which the limitation is to be calculated is mentioned. This period is in certain circumstances extended and the ground for such extension is mentioned in the sections. My learned brother Mushtaq Ahmad has mentioned in detail the sections or the Articles of the Limitation Act which mention "good faith". He has pointed out that "want of good faith" has been defined under Section 2 (7) as "something not done with due care and attention", and the only two sections which mention good faith are Sections 14 and 18, Limitation Act. The period of limitation fixed must depend on the nature of the suit and not the good faith or want of good Faith of the defendant. Be that as it may, the words "good faith" having been deliberately omitted in 1877 we would not be justified, to my mind, in holding that the Legislature omitted the words "good faith" yet Article 134 would only apply to a transfer made to a transferee who had purchased the property for valuable consideration and in good faith. I do not think it is open to us to import new words into the article when the legislature in its wisdom thought fit to omit the same.

7. Though I am of the view that it is not necessary for a transferee, who wants that Article 134 should be "made applicable that he should prove that the transfer was for valuable-consideration and that he purchased the property in good faith, I see certain other difficulties on which I would like to say a few words, though the points have not been raised in this case and have not been fully argued before

us by learned counsel.

8. Article 148, Limitation Act, provides for a suit against a mortgagee to redeem or to recover possession of immoveable property mortgaged. The period of limitation is sixty years from the date when the right to redeem or the right to recover possession accrues The article, therefore, provides for : (1) a suit to redeem a mortgage; and (2) a suit to recover possession of immovable property mortgaged. Both of them do not mean the same thing. The article further makes it clear that it relates to a suit against a mortgagee and the suit must be to redeem or to recover possession of immovable property. Article 134, on the other hand, provides for a suit to recover possession of immovable property and the suit must* be against a transferee to whom the immovable property has been transferred by the mortgagee for a valuable consideration. The points of difference between the two articles, therefore, are : (1) Article 148 relates to a suit against a mortgagee, and Article 134 to a suit against a person to whom the immovable property has been transferred by the mortgagee for a valuable consideration; and (2) Article 148 relates to a suit to recover possession or to redeem, while Article 134 mentions only a suit to recover possession. Article 148, as I have already pointed out, applies to a suit against a mortgagee. If the suit is against the original mortgagee, there can be no doubt that, whether the suit is for redemption or for possession, Article 148 is applicable. Where, however, the original mortgagee is dead, and the suit is against his heirs, there can again be no doubt that it is Article 148 that would apply. Article 148 should also apply to a case where the mortgagee's interest as such has been transferred. Such a transferee will clearly be the legal representative of the mortgagee and will, therefore, stand in his shoes. Where, however, the mortgagee has, in denial of the mortgagor's title, made a transfer of the property, the question arises whether Article 148 will apply or Article 134. Where the transfer is without consideration there can again be 10 doubt that Article 148 will apply As between the mortgagor and the mortgagee neither can deny the title of the other on the date of the mortgage and the mortgagee, therefore, cannot deny that on the date of the mortgage the mortgagor had a right to make the mortgage The observations of their Lordships of the Judicial Committee in Khiarajmal v. Daim, 32 Cal. 296 : (32 I. A. 23 (P.C.)) in this connection may be helpful. Their Lordships said :

> "As between them neither exclusive possession by the mortgagee for any length of time short of the statutory period of sixty years, nor any acquiescence by the mortgagor not amounting to a release of the equity of redemption will be a bar or defence to a suit for redemption if the parties are otherwise entitled to redeem. It is almost unnecessary to add that a renewal of the pattas or the making of a new settlement with Government in the names of nominees of the mortgagees did not alter the real title to the lands."

The mortgagee being thus estopped from claiming any adverse rights against the mortgagor a person acquiring the property without consideration can claim no better equities and to him, therefore, Article 148 would also be applicable as a representative of the mortgagee. Where a person has purchased the property, though for valuable consideration but with notice of the mortgage, to him also, to my mind, Article 148 should be made applicable. Having had notice of the mortgage he cannot plead higher rights than the mortgagee and prescribe adverse title. It will be, however, for the mortgagor, who claims that Article 148 applies to the suit, to establish that the transferee from

the mortgagee had notice of the mortgage and not for the transferee to prove that he is a transferee in good faith. In case the mortgagor is not able to prove such notice he cannot claim that Article 148 is applicable and the only article that would then apply is Article 134.

9. It appears to be hard and inequitable that a mortgagor who has borrowed money on the basis of a usufructuary mortgage in the belief that he will have a long period of sixty years to pay the debt and redeem the property, should find the period cut short to only twelve years by reason of the wrongful act of the mortgagee in transferring the property instead of the mortgagee rights. This really amounts to giving the mortgagee a right to cut down the period of limitation for a suit for redemption by making a dishonest transfer of the property in denial of the mortgage and thus forcing the mortgagor to claim possession against such a transferee within twelve years. On such a suit being filed the transferee from a mortgagee can, to my mind, fall back on the plea that though the mortgagee may not have had the right to transfer the property, at any rate, the limited interest that he had of a mortgagee was transferred to him and unless the amount due under the mortgage was paid up, he was entitled to remain in possession of the property. Mr. Gopi Nath Kunzru tried to suggest a solution by urging that a transferee who had purported to purchase immoveable property from a mortgagee cannot fall back on the original mortgage and he referred us to the cases of Balwant Singh v. R.R. Clancy, 39 I. A. 109 : (34 ALL. 296 P. C.), Shri Behariji Maharaj v. Manmohan Das, 1938 A. L. J. 1199 : (A. I. R. (26) 1939 ALL. 141.), which case later went up to the Privy Council and the decision of the Judicial Committee is reported in Manmohan Das v. Janki Prasad, 72 I. A. 39 : (A I. R. (32) 1945 P. C. 23). I do not think these decisions are of any real assistance, and I do not see why a transferee from a mortgagee, who has purported to purchase the entire property, cannot fall back on the mortgage and claim that, if he did not get the entire property, at any rate, he had acquired the mortgagee's interest and was entitled to remain in possession so long as the mortgage debt was not satisfied.

10. The reason for cutting down the period of limitation probably is, that there is no reason why a transferee from a mortgagee who has purchased the property without notice of the mortgage should be in a worse position than a trespasser who has taken possession of the property adversely to both the mortgagor and the mortgagee, and there being no equities against him there is no reason why he should require more than twelve years possession as full owner to prescribe full title.

11. It may further be mentioned that Article 148 applies to "a suit to recover possession or to redeem," while Article 134 applies only to a suit to recover possession. Section 60, T. P. Act provides for a suit for redemption the relevant portion of which is as follows :

> "At any time after the principal money has become due, the mortgagor has a right, on payment or tender at a proper time und place, of the mortgage-money to require the mortgagee,
>
> (a) to deliver to the mortgagor the mortgage deed and all documents relating to the mortgage property which are in the possession or power of the mortgagee,

> (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and
>
> (c) as the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct. . . . . ."

Section 62, on the other hand, provides for a suit for possession and is as follows :

> "In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property together with the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee,
>
> (a) where the mortgagee is authorized to pay himself the mortgage- money from the rents and profits of the property, when such money is paid;
>
> (b) where the mortgagee is authorized to pay himself from such rents and profits or any part thereof a part only of the mortgage-money when the term, if any prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the mortgage-money or the balance thereof or deposits it in Court as hereinafter provided."

The reason for the omission of the words "or to redeem in Article 134" may be that redemption can be sought; and is the appropriate remedy only in a suit against a mortgagee or his legal representative As against a person in possession of the property as full owner adversely to the rights under the mortgage the appropriate remedy would be a suit for possession unless the mortgagor can establish that the transferee had purchased the property with notice of the mortgage and was, therefore, estopped from claiming full ownership and could be redeemed as the legal representative of the mortgagor.

12. The result, therefore, is that, to my mind, Article 148 applies to a suit for possession or for redemption against a mortgagee, against the heirs of the mortgagee, against persons to whom the mortgagee's interest only has been transferred, against persons who have purported to purchase the property but without paying valuable consideration therefor and, against persons who have purchased the property with notice of the mortgage and are thus estopped from denying the title of the mortgagor. The burden of proving that the transferee had notice of the mortgage and that he was estopped from denying the mortgagor's title, must be on the plaintiff. To all other suits for possession of immovable property, where property was transferred by a mortgagee in possession to a transferee for valuable consideration, Article 134 is applicable and in such a suit it is not necessary for the defendant transferee to prove that he is a transferee in good faith. This would not result in any practical difficulty as the computation of the period of limitation and the applicability of the appropriate article of the Limitation Act would depend in the first instance on the nature of the suit and the allegations in the plaint, but the ultimate decision on the point would depend on the facts bund by the Court.

13. Coming to the facts of this case and the findings recorded by the lower appellate Court, I find that the lower Court not only held that the plaintiff and his predecessors had no knowledge of the fact that Mt. Sumrekha had mortgaged the property and then sold it to her son-in-law, Baleshwar Prasad, treating herself as the absolute owner of the property, but it also held that there was direct evidence to show that Baleshwar Prasad defendant had knowledge of the real nature of his mother-in-law's title. The finding of the lower Court on this point is as follows:

> "For these reasons I find that Baleshar Prasad knew when he obtained deeds dated 19-9-17 and 24-7-2S that Mt. Sumrekha was only a mortgagee of the property in suit and had no absolute title thereto." The plaintiff having thus proved that Baleshwar Prasad had knowledge of the real title of Mt. Sumrekha Baleshwar Prasad cannot deny the mortgagor's title and claim full ownership, and in having been held that the plaintiff and his predecessor got knowledge of the transfer within twelve years of the suit, the suit, even if Article 134 applied was within time.

14. The result, therefore, is that I agree that the appeal should fail and I would dismiss it with costs.

Mushtaq Ahmad, J.

15. This appeal was referred by a learned Judge of this Court to a Full Bench in view of an important question under Article 134, Limitation Act. being involved.

16. The appellant was the defendant in a suit for redemption of a usufructuary mortgage in respect of a house executed by three brothers, Kanhai, Mahabir and Mahadeo on 1-9-1881 for Rs. 200 in favour of one Hat hi Prasad. The plaintiff is the purchaser of the equity of redemption under a sale-deed dated 19-7-1941, executed by defendants 7 to 9 sons of Bhairon Prasad who was a grandson of Kanhai, one of the mortgagors, the other mortgagors Mahabir and Mahadeo dying heirless.

17. The mortgagee. Hathi Prasad left a widow Mt. Sumrekha and a daughter Mt. Chunai, defendant 1, who was married to one Baleshwar Prasad.

18. On 19-9-1917, presumably after the death of Hathi Prasad his widow Sumrekha executed a usufructuary mortgage in favour of her son-in-law Baleshwar Prasad of the proprietary title in the house as if she was its absolute owner, and not a mere mortgagee, as the heir of Hathi Prasad. This was for RS. 5000. No reference was made in the document to the usufructuary mortgage of 1-9-1881. On 24 7-1925 Mt. Sumrekha executed a sale-deed of the house in favour of the said Baleshwar Prasad in which she did refer to the deed of 1-9-1881 as one of sale and not merely of a mortgage. This was for RS. 1000. It may be noted that a few months earlier, on 31-1-1924, Bhairon Prasad, father of the transferors of the plaintiff, had applied under Section 83, T. P. Act, impleading Mt. Sumrekha and her son-in-law Baleshwar Prasad, and in that application he had alleged that under the deed of 19-9-1917, only the mortgagee rights had been transferred by Sumrekha to Baleshwar Prasad. The money deposited was, however, not accepted by the mortgagee, and the application was dismissed. In his plaint, the plaintiff had alleged that the mortgage- of 19-9-1917

was only in respect of the mortgagee rights and not of the full proprietary title in the house, though, later by amendment, it was mentioned that, according to what the plaintiff had come to know subsequently, it was really in respect of such title.

19. Mt. Chunai, defendant 1, the daughter of Sumrekha and widow of Baleshwar Prasad, alone contested the suit. She pleaded that defendants 7 to 9 were not the heirs of the mortgagors, that the transaction of 1-9-1881 was in fact a sale, that Hathi Prasad and his heirs had been in adverse possession of the house, that Baleshwar Prasad was a bona fide purchaser of the house for value that the suit was barred by time and that she (defendant 1) and her predecessor had spent a large sum of money on repairs and re-construction of the house exceeding Rs. 5000 which the plaintiff was bound to pay on redemption.

20. The Court of first instance found that defendants 7 to 9 were the heirs of the mortgagors, that the transaction of 1-9-1881 was only a mortgage and not a sale, that the mortgagee Hathi Prasad or his descendants had not acquired any proprietary title in the house by adverse possession, that Baleshwar Prasad was not a bona fide purchaser, that the suit was not barred by time and that the plaintiff was entitled to redemption on payment of Rs. 800 including Rs. 600 as the aggregate amount spent by the mortgagee or her descendant on repairs. This decree was affirmed in appeal by the lower appellate Court on the findings mainly that the plaintiff's predecessor Bhairon Prasad was not aware that Mt. Sumrekha had mortgaged the house under the deed of 19-9-1917 as its absolute owner, that the plaintiff had had no knowledge of any one of the transfers made by Sumrekha before he purchased the house under the deed of 19-7-1941, that Baleshwar Prasad, the transferee of Mt Sumrekha, knew that the latter was only ,a mortgagee and not the absolute owner of the house, and that, in these circumstances, defendant 1 was not entitled to the benefit of Article 134, Limitation Act, and the suit was within time.

21. It would be useful to quote a passage from the judgment of the lower appellate Court containing its finding on the question of the knowledge of Bhairon Prasad, the plaintiffs predecessor, with regard to the nature of the mortgage of 19-9-1917, as the learned Judge referring this case to a Full Bench was inclined to take a different view on that question:

> "Now the appellant's contention is that the application for redemption dated 31-1-1924 shows that plaintiff's predecessor Bhairon knew in 1924 that Mt. Sumrekha had mortgaged the house in suit treating herself as its owner. I am unable to agree with this contention because a reference to para 4 of that application clearly shows that all that Bhairon Prasad therein admitted was that Baleshwar Prasad was a mortgagee of the mortgagee rights from Mt. Sumrekha. It is important to note that he did not therein allege-that Baleshwar Prasad was a mortgagee of the proprietary rights of Mt. Sumrekha. It is needless to say that the only knowledge which can he imputed to' Bhairon Prasad on the basis of the recitals of para. 4 of the said application is that Mt. Sumrekha had mortgaged her mortgagee rights in the disputed house to her son-in-law Baleshwar Prasad, which is wholly distinct from saving that he had knowledge of the fact that Mt. Sumrekha had mortgaged some thing which she obviously never had, namely, an absolute interest in the house, I say this because

> a reference to the deed dated 1 9-1881 clearly shows that that deed is a mortgage deed and not a sale-deed, and there is nothing to show that Bhairon Prasad had seen the deed dated 19-9-1917 at any time. Taking all these facts into consideration I am unable to hold that plaintiff's predecessor Bhairon ever had knowledge of the fact that Mt. Sumrekha had mortgaged this house to her son-in-law, Baleshwar Prasad, treating herself as its absolute owner."

22. The learned Judge of this Court, however, thought that this finding was "perverse" and should be set aside. He remarked:

> "It has also been argued that, even if Bhairon had no actual knowledge of the nature of right which Sumrekha purported to convey to Baleshwar Prasad, he must be deemed to have a constructive notice of the-contents of the mortgage deed of 1917. There is force in this contention. The lower appellate Court relied upon para 4 of the application under Section 83, T. P. Act, made by Bhairon. That para, shows that Bhairon thought that the transfer of 1917 was not of any absolute title in the house, but only of mortgagee interest. It must be presumed that he saw the title deeds of Mt. Sumrekha and Baleshwar Prasad. If it was so, there was no good reason for him to think that only mortgagee rights were transferred."

The mere fact that the the plaintiff's predecessor Bhairon Prasad had, in his application, referred to in the above quotations, namely, the application under Section 83, T. P. Act, mentioned that Baleshwar Prasad was a mortgagee of the mortgagee rights did not necessarily show that he (Bhairon Prasad) had also seen and read the mortgage deed of 19-9-1917, so as to have had a knowledge, actual or constructive, of the contents of that deed. Surely, no presumption contrary to the actual statement made by Bhairon Prasad in that application could be made against him on the question of his knowledge about the rights which Baleshwar Prasad had acquired under the said deed. I am, therefore, inclined to hold that there was no such error or flaw in the finding of fact recorded by the lower appellate Court on this point as the learned Judge conceived and that the finding must be accepted and affirmed in this appeal. I would indicate later the effect of this finding on the result of the appeal.

23. The lower appellate Court relying on Drigpal v. Kallu, 37 ALL. 660 : (A.I R. (2) 1915 ALL. 425), had also held that Baleshwar Prasad's knowledge' about the limited rights of his transferor Mt. Sumrekha, a mere mortgagee, did not entitle defendant 1 to benefit of Article 134, Limitation Act. The learned Judge of this Court, while referring the case to a Full Bench, cited the case of Sri Ram v. Najib Ullah, A. I. R. (13) 1926 Oudh 547 : 1 Luck. 423 F. B. and the Full Bench decision in Baikunthanath Roy v. Ahmedullah, A. I. R. (18) 1931 Cal. 113 : 58 Cal. .234 in support of the view that the element of good faith was immaterial and that' Article 134 of the Act applied to a transferee of immovable property from a mortgagee irrespective of whether the transfer was with or without notice of the mortgage. There was thus a conflict between these two cases on the one hand and the Allahabad case first mentioned on the other which necessitated a reference of this case to a Full Bench.

24. Being of the view that the finding of the lower appellate Court with regard to the want of knowledge of the plaintiff and his predecessor about Mt. Sumrekha having mortgaged and subsequently sold under the deeds of 19-9 1917 and 24-7-1925 respectively, not only her mortgagee rights but an absolute title in the house to Baleshwar Prasad, the only point remaining to be considered for the decision of the appeal is whether an element of good faith is essential for the application of Article 134, Limitation Act. The plaintiff's case was that the contesting defendant was bound to prove the bona fides of her husband Baleshwar Prasad in accepting the two transfers in his favour from Mt. Sumrekha before she could invoke the bar of this article. According to him, defendant 1 was not entitled to the benefit of this article, unless she proved such good faith and that, if it was found that Baleshwar Prasad had taken the transfers in spite of his knowledge that Mt. Sumrekha had no right to transfer the absolute title, the plea of limitation could not be urged under the article. On the other hand, defendant 1 maintained that, on the plain reading of the article no question arose of any good or bad faith of her predecessor-in-title and that in either case the burden was on the plaintiff to establish that his suit was within 12 years of the date of his knowledge about the transfer dated 19-9-1917. I have, therefore, to consider whether Article 134, Limitation Act, as worded, required the contesting defendant to prove the good faith of predecessor -in-title in respect of the transfers in his favour before she could be allowed to invoke any bar of limitation thereunder.

25. The Article reads thus :

"Description of suit.	Period of limitation	Time from which period begins to run.
To recover possession of immoveable property conveyed or be bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration.	Twelve years.	When the transfer becomes known to the plaintiff.

26. The only ingredients of this article, ignoring cases of trust are : (1) that the suit should be to recover possession of immoveable property mortgaged, and afterwards transfer, red by the mortgagee for a valuable consideration and (2) that the suit should be within 12 years from the date when the transfer becomes known to the plaintiff.

27. No other condition is mentioned in this article to warrant its application in a particular case. For instance, it makes no reference to any question of good faith or bad faith on the part of the transferee from the mortgagee as a condition of its

applicability. This is the primary feature which strikes me.

28. Before I examine the principles governing the interpretation of a statute it would be useful briefly to refer to the successive changes which the Legislature has made in the law embodied in Article 134 of the present Limitation Act IX [9] of 1908. In Section 5, Limitation Act, XIV [14] of 1859, we had the words "bona fide purchaser." In Article 134, Limitation Act, IX [9] of 1871, these words were repeated and the words "for value" were also added. That article was worded thus :

"To recover possession of immoveable property conveyed in trust or mortgaged and afterwards purchased from the trustee or mortgagee in good faith and for value."

The case of Radhanath v. Gisbourne & Co., 14 M. I. A. 1 : (6 Beng. L. R. 530 P. C.) to which I shall have to refer again, was decided by the Judicial Committee under this Act. In Article 134, Limitation Act, XV [15] of 1877, we find the words "good faith" altogether dropped, and the words "for value" were replaced by the expression "for valuable consideration". The words "good faith" remain absent right up to this date. By Section 3, Limitation (Amendment) Act I [1] of 1929, the words "from the date of transfer" were replaced by the expression "from date of knowledge", and in Article 184 of the present Act, IX [9] of 1908, the words "purchased from the mortgagee" were replaced by the words "transferred by the mortgagee."

29. On these changes in the law relating to a suit for recovery of possession against the transferee of an immoveable property by its mortgagee, the obvious question that emerges is whether, in spite of the Legislature having omitted the words "good faith" in Article 134 of Act XV [15] of 1877 and never introduced them again up to date, there would be any justification for the Court to assume that the point must be decided as if those words still existed in the present Act. I say this in deference to the lines on which the divergent rulings in this country on the point have proceeded, otherwise, as a matter of general principle of interpretation, I should think that it is not open to me to embark upon any question of policy or moral justice to warrant the assumption that the words "good faith" should still form the basis of our decisions, when a controversy arises under Article 134, Limitation Act. A reference to those cases would actually disclose a recourse to the aspect of policy and of the question as to what the Legislature might have intended by removing those words in the Act of 1877 or as to whether they had not in fact intended to suggest any radical change in the law despite such removal. In my view, any such analysis which proceeds on a consideration of mere policy or moral justice would, strictly speaking, be extraneous to the power of the Court whose function is to interpret the law as it is actually worded in its moat natural meaning, untrammelled by any artificial or extraneous reasoning.

30. While interpreting Article 182 of the present Limitation Act, the Judicial Committee in Nagendra Nath v. Suresh, A. I. R. (19) 1932 P. C. 165 at p. 167 : (60 Cal (SIC) observed :

"But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the word is, their Lordships think the only pate guide".

The Federal Court in In the matter of allocation of lands and buildings Section 213, Government of India Act, 1935, A. I. R. (30) 1943 F. C. 13 : (I.L.R. (1943) Kar F. C. 10) remarked:

> "The fact that a particular interpretation of an Act of parliament produces anomalous results is not, however, a decisive reason for rejecting the interpretation, if it is a result of construing the words which Parliament has used in their natural and grammatical sense."

The same position was emphasised by their Lordships in Piare Dusadh v. Emperor, A.I.R. (31) 1944 P. C. 1 : (45 Cr. L. J. 413) in these words:

> "Questions of fairness or policy are not matters which the Court could take into consideration when the language of the enactment leaves little or no room for doubt."

31. It is not possible, on the plain words of the article, to introduce any notion of good or bad faith on the part of the transferee from a mortgagee as a condition precedent to its applicability. If we were tempted to do this only to achieve a result which appears as just or reasonable or rational, we can do so only by introducing some element of public policy or moral justice or introducing some idea of what the Legislature may or may not have contemplated. That may be permissible where the language of the statute is doubtful or ambiguous. Where no such difficulty exists and the language is clear and explicit, there is neither the necessity of invoking any outside help to interpret the law, nor is there any legal justification for doing so, otherwise it would be a violation of the rule enunciated in the cases just mentioned. This is my first approach to the question.

32. There can be no doubt that, on the words used in the article, there is no distinction between a transferee from a trustee and a transferee from a mortgagee and there is almost a consensus of opinion in this country that the former need not prove good faith to plead the bar of limitation mentioned therein. I may cite for example the cases of Gomti Misra v. Deotadin Singh. A. I. R. (11) 1924 Oudh 44 : (26 O. C. 197) and Baikunthanath Roy v. Ahmedullah, 58 Cal. 234 : (A. I. R. (18) 1931 Cal 113). But if it is so, there seems to be no reason why a transferee from a mortgagee should be placed in a worse position than a transferee from a trustee, in the sense that, while the latter need not prove his good faith, the former must prove his, to seek the shelter of this article. The Bench in Wazir Chand v. Nathu Ram, A. I. R. (11) 1924 Lah. 468 : (80 I. C. 321) of which Shadi Lal C. J. was a member explained the position in these words :

> "Now if the Article 134 alone were regarded, and the matter were res integra it would be hard to resist the conclusion that the transferee from a trustee and the transferee from a mortgagee are placed in the same position, and as admittedly, the trustee's transferee comes within the shelter of the article even in the absence of good faith, the mortgagee's transferee in spite of the knowledge of the defect in his absolute title would appear to be safe from attack from the mortgagor-after the Lapse of 12 years."

It was not suggested by the learned counsel for the plaintiff-respondent that any distinction existed between the position of these two classes of transferees in respect of their good faith in accepting

transfers, one from a trustee and the other from a mortgagee. I mention this only as one of the aspects to be considered in appraising the merit of his contention that the contesting defendant in this case must prove the good faith of her predecessor-in-title, Baleshwar Prasad in taking a mortgage of the property in dispute under the deed of 19-9-1917 from Mt. Sumrekha, a mere mortgagee. There seems to be no reason in law why a burden should be cast on a transferee from a mortgagee which is not to be imposed on a transferee from a trustee although the property transferred in each case is inalienable. This is my second approach to the question.

33. It would be interesting to examine some of the sections and articles of the Limitation Act to find where and in what connection the words "good faith" were used or not used by the Legislature and to see whether their presence in or absence from them has a bearing on the question I am now considering, that is, whether these words should be imported into Article 134 as a condition of its applicability. The term "good faith" was explained in Section 2 (7) of the Act as :

> "Nothing shall be deemed to be done in good faith which is not done with due care and attention."

While it was mentioned in Sections 14 and 18, it is remarkable that it was not mentioned in Sections 26 and 28 of the Act, although one could imagine that it might quite appropriately have found a place in each of the last two sections. Section 26 deals with the acquisition of a right of easement and provides for the creation of such a right only by an open and peaceful enjoyment of the benefit mentioned therein for a period of 20 years. There is no element of good faith or bad faith there. Similarly, Sections 28 provides for the extinction of a right to property at the determination of the period limited by the Act to any person for instituting a suit for its possession. There also the conduct of the defendant as revealing bad faith was not stated as a factor mitigating the extinction of such a right. Coming to the articles of the Act, we do not find the words "good faith" or "bad faith" mentioned in any one of them throughout the Act, although, in some of them, the Legislature might have mentioned them as affecting the general rule provided in those articles. Article 94 talks of a suit for possession over property which the plaintiff has conveyed while insane, and the period provided is three years from the date when he is restored to sanity and has knowledge of the conveyance. Nothing in the conduct of the defendant is to affect this rule. Last of all, we have Arts. 134A, 134B and 134C. The first deals with a suit to set aside a transfer of immovable property comprised in a Hindu, Mohammedan or Budhist religious or charitable endowment made by a manager thereof for a valuable consideration, and the period provided is 12 years from the date when the transfer becomes known to the plaintiff. The second deals with a suit by the manager of a Hindu, Muhammedan or Buddhist religious or charitable endowment to recover possession of immoveable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration, and the period provided is 12 years from the death, resignation or removal of the transferor. The-third and last deals with a suit by the manager of such an endowment to recover possession of moveable property comprised in the endowment, which has been sold by a previous manager for a valuable consideration, and the same-is the period provided beginning from the death, resignation or removal of the seller. In none of these articles, just as in Article 134, is-there any reference to good or bad faith as modifying the general rule mentioned therein. I cannot imagine how it is open to us to introduce any such concept into these articles as

may necessarily affect their normal operation,, in the sense that it may render their applicability only conditional on the presence or absence-of a particular incidence not mentioned by the Legislature itself. Having already pointed out the omission of the words "good faith" in Art. 134 of Act XV [15] of 1877 and their continued absence from the succeeding Acts, their introduction into Article 134 of the present Act would, in my opinion, be nothing short of an anomaly scarcely warranted by any principle of law. This circumstance also confirms the view that no such words should be read into Article 134 of the Act. This is my third approach to the question.

34. Coming now to the case-law on the point, we find a bewildering conflict between two large groups of cases in India, one holding, that good faith on the part of the transferee-alone can entitle him to seek the protection of Article 134 and the other holding that this is wholly irrelevant to the applicability of that article in a particular case. I would be anxious in my analysis to avoid encumbering my judgment with needless citations and confining it only to such cases as have prominently brought out this divergence of opinion. As a member of a Bench of five Judges in this case I, of course, consider myself free to express my own views, as if the matter were still res integra.

35. Taking the Allahabad cases first, there is a Bench decision in Naunihal Singh v. A.G. Skinner. 47 ALL. 803 : (A. I. R. (12) 1925 ALL. 707), holding that the question of good faith in applying the article is wholly immaterial. Lindsay J. in his separate but concurrent judgment observed:

> "I do not see why the transferee should be bound to enquire how that possession was obtained, for, under the law as it now stands the transferee is not required to show bond fides which was necessary under the law as it was when the case of Radhanath Das v. Gisbourne, 14 M. I. A. 1 : (6 Beng. L R. 530 P. C.) was decided. The alteration in the law appears to have been made advisedly in order to exclude the notion that absence of notice of the real owner's claim was necessary to enable a purchaser to claim the protection of this article."

36. This ruling was no doubt reversed by the Judicial Committee in James Richard R. Skinner v. Naunihal Singh, A. I. R (16) 1929 P. C. 158 : (51 ALL. 367) but nothing was said by their Lordships in derogation of the view expressed in the passage I have above quoted. This decision stands in marked contrast to a number of rulings of this Court, two of which are Bench decisions and four are Single Judge cases. One of the Bench rulings is Bhagwan Sahai v. Bhagwan Din, 9 ALL. 97, which was based entirely on the Privy Council case in Radhanath v. Gisbourne & Co., 14 M. I. A. 1: (6 Beng. L.R. 530 P. C.) itself based on the language of Article 134 of Act IX [9] of 1871, in which the words "bona fide purchaser" occurred. This case, therefore, is not of much help. The other Bench decision was Drigpal Singh v. Kallu, 37 ALL. 660: (A. I. R. (2) 1915 ALL. 425). The learned Judges remarked :

> "We think that there is no reason for holding that the omission of the words "in good faith" from the recent Act entitled the person who purchased with full knowledge that his vendor's title was merely that of mortgagee to the benefit of Article 184. It may have been that the words were considered not altogether appropriate and that their retention would throw the onus on the transferee of proving that he had no knowledge of his vendor's title. This would be in many cases a hardship upon the

> person in possession of the property he would have to prove a negative possibly after the lapse of many years. Whatever may be the reason for omitting the words, we cannot think that the Legislature intended that the mortgagee and his transferee should be able to shorten the period allowed by law for redeeming a mortgage by wilfully and, to the knowledge of both, misdescribing the interest transferred in the deed of transfer."

37. With regard to the above passage, I must confess that I am oppressed by one difficulty in not subscribing to the view expressed by the Bench. If the knowledge of the transferee is an immaterial factor, then, where he is aware of the restricted right of his transferor, namely that the latter is not the owner but only a mortgagee of the property and as such cannot transfer the property itself, his position is at par with the transferor himself who also of course knows the restricted nature of his own right. In this view, both the transferor and the transferee should be in the same position, so far as the illegality of the transfer of the property itself is concerned, the one knowing that he could not transfer it and the other that he could not accept such a transfer. Why in such a case should the period for redemption against the mortgagee (transferor) under Article 148 be 60 years and that for a suit to recover possession against the transferee under Article 134 of the Act) be only 12 years? This probably is what the learned Judges meant by using the word 'shorten' in the above passage. But this, again, would be bringing an aspect of policy and the likelihood of a particular intention of the Legislature to bear upon the interpretation of the article, completely divorced from its natural and grammatical meaning. I have already observed that this is not permissible in view of the observations of the Judicial Committee and the Federal Court I have above quoted. To interpret the article in the light of the anomaly suggested in the passage would, in my opinion, be to depart from the primary rule of interpretation that the words of the statute must be taken in their natural sense and not in the light of any extraneous circumstance.

38. The first Single Judge case of this Court is Ghasi Ram v. Mt Kishna, 13 A. L. J. 877 : (A.I.R. (2) 1915 ALL. 422). That proceeded only on the principle of stare decisis, which need not restrain us in the present case. The second such case is Panna Lal v. Rameshwar Sahai, 29 I. C. 403 : (A.I.R. (2) 1915 ALL. 203) in which also the decision proceeded entirely on what the learned Judge thought had previously been held in a number of cases by this Court, namely that where the transferee from the mortgagee had notice of the mortgage, he was not entitled to invoke the aid of this article. The third is the case of Munawar Ali v. Jagmilan Ram, A. I. R. (14) 1927 ALL. 177: (99 I. C. 280). There the point was only assumed, and there was no independent discussion of it. The last such case is Abdul Aziz v. Munni Lal, A. I. R. (17) 1930 ALL. 417 : (124 I. C. 408). That was based entirely on the case in Ghasi Ram v. Mt. Kishna, 13 A. L. J. 877 : (A. I. R. (2) 1915 ALL. 422), the first Single Judge case just mentioned.

39. In Bombay there is no concensus on the point, and I may refer only to two cases, each taking a different view. In Keshav Raghunath v. Gafoor Khan, 46 Bom. 903 : (A.I.R. (9) 1922 Bom. 234) it was hold that good faith was immaterial, while in Vishvanath v. Tukaram, A. I. R. (12) 1925 Bom. 417 : (89 I. C. 189) it was held that the same was a relevant factor.

40. In Calcutta the view uniformly taken has been that good faith under the article is immaterial, for instance, the cases of Baikunthanath Roy v. Ahmedullah, 58 Cal 234: (A.I.R. (18) 1931 Cal 113) and Narain Das v. Abdul Rahim, 47 Cal. 866 : (A. I. R. (7) 1920 Cal. 379). In the former, no doubt, Costello J., while agreeing with Suhrawardy J. substantially, expressed a doubt as to whether the transferee's actual, as distinguished from constructive, notice of the defect in the transferor's title would also afford him protection under the article.

41. In Madras the view on this question has varied. In Venku v. Bamachandrayya, 49 Mad. 29 : (A.I.R. (13) 1926 Mad. 81) and S.N. Thiruvikrama Ayyar v. Vyapuri Naicken, A. I. R. (14) 1927 Mad. 1028, it was held that good faith was immaterial, while in Manavikraman Etten Thamburan v. Ammu, 24 Mad. 471 (F.B.) and Mariyumma v. Andu, A. I. R. (16) 1929 Mad. 145: (115 I. C. 149) the contrary view was taken.

42. In Avadh also the view on the point has mot been uniform. In the Full Bench case in Sri Ram v. Najibullah, 1 Luck. 423 : (A. I. R. (is) 1926 Oudh 547 F.B.) and in Suleman Bahadur v. Fida Husain, A. I R. (32) 1945 Oudh 258 : (1945 O. W. N. 182) it was held that under Article 134 a transferee without notice and a transferee with notice were on the same footing. As an example of the contrary view may be cited the Single Judge decision in Bijai Pratab v. Raghuraj Singh, A. I. R. (9) 3922 Oudh 7 : (25 O. C. 115).

43. In Lahore also the pendulum has swung either way. In Fazal Din v. Mohammad Hafiz, A.I.R. (18) 1931 Lah. 129 : (130 I. C. 780) the question whether good faith was essential for the transferee to prove to plead the bar of Article 134 was answered in the negative, while in Mehnga v. Zaman Ali Shah, A. I. R. (18) 1931 Lah. 464 : (132 I. C. 184) it was answered in the affirmative.

44. There is thus a bewildering conflict, as I have once remarked, between the two sets of decisions in this country, each having a respectable volume of authority in its support. Those in favour of the view that good faith is immaterial generally proceeded on the ground that the Legislature had advisedly omitted these words from Article 134 of Act XV [15] of 1877, while the decisions on the other side sought to explain the ineffectiveness of such omission generally on the authority of the decision of the Judicial Committee in Radhanath v. Gisbourne & Co., 14 M. I. A. 1 : (6 Beng. L. R. 530 P. C.) which itself, as I have shown, was based on Article 134 of Act IX [9] of 1871, containing the words "bona fide purchaser". In view of the Consideration that I find no sufficient reason to account for the omission of those words from the Act of 1877 except the hypothesis that the Legislature did intend to remove all obstacles to the applicability of that article on the score of the transferee's good faith, when enacting the later Act xv [15] of 1877, I am inclined to hold that the decisions in which good faith was held to be immaterial lay down the correct law. I am strengthened in this view also by the tests I applied before I began my review of the case law on the point in this country. I would, therefore, hold that it was not necessary for the contesting defendant to prove that her husband Baleshwar Prasad had acted in good faith in accepting the mortgage of 19-9-1917 or the sale of 24-7-1925 from Mt. Sumrekha who was a mere mortgagee and that, even in the absence of such proof, she was entitled to plead the bar of Article 134, Limitation Act.

45. But the lower appellate Court having recorded an unassailable finding of fact that the plaintiff or his predecessor had not been aware of Mt. Sumrekha having executed the said mortgage and the said sale as owners of the property transferred thereunder, the, suit was within time under Article 134, Limitation Act, and the Courts below were right in decreeing the same.

46. "It would seem that nothing further is needed to dispose of the appeal, which, as a result of the observations I have made above, would stand dismissed.

47. Another point, however, was also raised at the Bar inviting a comparison of Arts. 134 and 148, Limitation Act, although, so far as this appeal is concerned, the point was merely academical, the suit being within time under both these articles. A distinction was suggested between a suit far redemption against the mortgagee and a suit to recover possession of the mortgage property against his transferee. While Article 134 refers to a suit to recover pos session from such a transferee within 12 years of the plaintiff's knowledge of the transfer, Article 148 refers to a suit for redemption, or to recover possession of the mortgage property, against the mortgagee, for which the period prescribed is 60 years from the time the right to redeem or to recover possession accrues. The relief to recover possession is thus common to both the articles, so that a suit for such relief can be brought not only against the transferee of the mortgagee but also against the latter, who can be impleaded as a defendant in a suit for redemption.

47a. The suit in the present case was framed specifically as one for redemption, to which defendant 1 who is not only the daughter of the mortgagee Hathi Prasad and therefore her representative-in-interest as a mortgagee but is also the widow of Baleshwar Prasad, the transferee of the property from Mt. Sumrekha, widow of Hathi Prasad. The rights of the mortgagee and also the 'proprietary title in the property by virtue of the sale-deed of 24-7-1925 thus came to be vested in the same individual, defendant 1, so that not only the mortgagee but also his transferee are in fact parties to the suit, although both the capacities are in this case combined and exist in the same person, the relief claimed, as already stated, being purely for redemption.

48. Mt. Sumrekha, widow of the mortgagee Hathi Prasad, was no doubt entitled to transfer the mortgagee rights, though not the proprietary title, in the house. Having transferred the proprietary title to her son-in-law, Baleshwar Prasad, she would be taken to have transferred not only her smaller right as a mortgagee but also the mortgagor's equity of redemption which she in fact was not entitled to transfer. Her transferee Baleshwar Prasad could in law claim the rights of a mortgagee, so that the property could not be recovered from him or his widow, defendant 1, without the mortgage money being paid to him or her, as the case may be. The plaintiff himself never denied his liability to pay such amount as might be found due under the mortgage, to whomsoever the amount belonged as a legal representative of the original mortgagee.

49. On the finding of fact recorded by the lower appellate Court and accepted by me in this judgment, the suit was obviously within time under Article 134, Limitation Act, and, taken even as a suit for redemption against the mortgagee, it was within time also under Article 148 of the Act, having been brought within 60 years from the expiry of the six months stipulated in the mortgage of 1-9-1881, within which the amount had to be paid by the mortgagor. I may incidentally mention

here that the deed provided that in case of default the mortgagee shall become the owner of the property. It being admitted that no foreclosure proceedings were taken against the mortgagor that recital became ineffective.

50. On a critical view of the question whether there is any distinction between a suit for redemption against a mortgagee and a suit to recover possession against him, it would be seen that there is none from a practical standpoint. Every suit for redemption is of course a suit for possession, although the reverse is not true. Section 60, T. P. Act, dealing with the mortgagor's right of redemption, expressly provides for his requiring the mortgagee after the principal money has become due and where the latter is in possession of the mortgage property "to deliver possession thereof to the mortgagor". Section 62 of that Act also provides for the right of the mortgagor "to recover pos-session of the property": (a) where the mortgagee is authorised to pay himself the mortgage-money from the rents and profits of the property--when such money is paid, and (b) where the mortgagee is authorised to pay himself from such rents and profits or any part thereof a part only of the mortgage money--when the term (if any) prescribed for the payment of the mortgage money has expired and the mortgagor pays or tenders to the mortgagee the mortgage money or the balance thereof or deposits the same in Court. This means that the mortgagor is entitled to recover possession of the mortgage property from the mortgagee when the amount has either been paid out of the usufruct or the unpaid balance of it has been tendered or deposited in Court. Order 34, Rule 7 of the Code also requires that the Court, while passing a preliminary decree for redemption, shall direct the mortgagee, if he is in possession, to redeliver the property to the mortgagor.

51. In the case of Husaini Begum v. The Collector of Kanpur, 4 A. L. J. 375 : (29 ALL. 471) in which the facts were that a mortgagee of 12 villages had transferred five of them to another, the suit for redemption, though dismissed against the transferee as barred under Article 134, Limitation Act, was decreed against the mortgagee in respect of the remaining seven villages on payment of a proportionate amount of the mortgage money. In Lakhmi Das v. Mt. Badla, A.I.R. (14) 1927 ALL. 807 : (102 I. C. 135) it was held that:

> "A suit for redemption of a mortgage with possession is essentially a suit for possession. The decree in such a suit directs delivery of possession of the mortgage property to the mortgagor on certain conditions. The relief that he seeks by such a suit is the relief to be put back in possession of the property mortgaged."

52. It was no doubt also held in this case that good faith of the transferee was an essential element for pleading the bar of Article 134, Limitation Act, but on this point I have already expressed my views to the contrary. In Fazal Din v. Mohammad Hafiz, A. I. R. (18) 1931 Lah. 129 : (130 I. C. 780) already referred in another connection, it was held that:

> "A suit for redemption brought by the mortgagor against an alienee from the mortgagee is governed by Article 134."

52a. In the Full Bench case of Mulla Vittil Seeti Kutti v. Kunhi Pathumma, 40 Mad. 1040 : (A. I. R. (6) 1919 Mad. 97 F. B.), Seshagiri Aiyar J. observed:

> "Article 134 is in the nature of an exception to. Article 148 and its object is to afford protection to person in possession."

Again, in the Full Bench case of Sri Ram v. Najibullah, 1 Luck. 438 : (A. I. R. (13) 1926 Oudh 547 F. B.) also referred to above and cited by the learned Judge referring this case, it was remarked :

> "A consequential relief in every suit for redemption is the recovery of possession where the mortgagor is not in possession of the mortgage property . . . . It is apparent from the language of Col. 1 of Article 148 that the article contemplates also a suit 'to recover possession of immovable property'. So the mere fact that the present suit may be treated as a suit for redemption would not necessarily place it under Article 148 or take it out of Article 134, Limitation Act."

53. The practical effect of the above observations seems to be that, where a suit to recover possession of the property against the transferee is barred under Article 134, Limitation Act, no decree even for redemption can be passed in favour of the mortgagor and where it is not so barred, a decree for redemption against the mortgagee in a suit brought against him and his transferee can always be passed, if the relief is within time under Article 148 of the Act. As I have remarked, the question in the present case in which the suit, on the finding of fact recorded by the lower appellate Court, was within time under Article 134, Limitation Act, is only of an academical interest. I have dwelt with it only in deference to the arguments addressed at the Bar.

54. In the light of what I have said above, I would dismiss this appeal with costs.

55. Wanchoo and V. Bhargava JJ--We have had the advantage of reading the judgments of the learned Chief Justice and our brother, Mushtaq Ahmad, J. and wish to add only a few words.

56. It seems to us that when the words "bona fide" which appeared in the Limitation Act XIV [14] of 1859 and the words "good faith" which appeared in the Limitation Act IX [9] of 1871 were dropped altogether from the Limitation Act XV [15] of 1877, there is no justification for holding that "good faith" or "bona fide" of any kind is required before a transferee from the mortgagee can take advantage of Article 134, Limitation Act. Some High Courts did certainly hold that in spite of words importing good faith having been dropped from Article 134, there was no substantial change in the law so far as the requirements of "good faith" are concerned. Many of these cases were of a period before the Limitation (Amendment) Act I [1] of 1929. By Section 3 of this Act, the period of limitation for the application of Article 134 was to begin from the date of the knowledge of the transfer and not from the date of the transfer. Before 1929, the period of limitation began from the date of the transfer irrespective of whether the mortgagor had knowledge of the transfer or not. That provision was certainly harsh and if it was possible for the mortgagee and transferee to keep the transfer concealed from the mortgagor for twelve years, the mortgagor's right to the property came to an end by virtue of Article 134. It was probably to mitigate the rigour of this provision that some High Courts were driven to the view that the removal of words importing good faith from Article 134 did not make any substantial change in the law. It seems to us, however, that there is no necessity now, after the amendment of 1929, to import words implying good faith into Article 134 when such

words were specifically dropped by the Limitation Act, XV [15] of 1877. Now that the starting point of limitation is the date on which the mortgagor comes to have knowledge of the transfer, there is no such harshness in the provision of Article 134 as there was before the amendment of 1929. We would, therefore, hold, in agreement with our brother, Mushtaq Ahmad J., that good faith is not necessary either on the part of the mortgagee or the transferee so far as the application of Article 134 is concerned.

57. It has been said that Article 134 severely cuts down the period given to the mortgagor for redemption by Article 148. This is correct, but obviously the intention of the Legislature by enacting Article 134 was to cut down the period of limitation provided in Article 148. As has been pointed out by the learned Chief Justice, this may have been due to the fact that the Legislature wanted the period of limitation in the case of a transferee from a mortgagee to be twelve years just as in the case of a trespasser. The intention appears to have been to relegate a transferee from a mortgagee, who takes the entire property and not the mortgagee rights only under the transfer, to the same position as a trespasser and to afford to him the same protection under the Limitation Act as is afforded to a trespasser. In this view no distinction can be made between a transferee who has notice of the fact that his transferor owns mortgagee rights only and one who takes it without such notice. Even if the transfer is taken with notice of the mortgagees limited rights, Article 134 will apply to the transfer if it purports to transfer the mortgaged property and not merely the mortgagee rights as the fact of notice can in no way alter the character of the property transferred which 'is the only consideration for the applicability of Article 134. This provision certainly operate harshly on the mortgagor before 1929 particularly in cases where the mortgagee and his transferee may deliberately enter into a collusive transfer. But now, after the amendment of 1929, there will not really be any serious harm to the mortgagor by the application of Article 134. In the first place, so long as the mortgagor does not come to know of the transfer, limitation does not begin to run against him and he may not come to know of the transfer for years and years. Further, even if he does come to know of the transfer, and thus the period of limitation provided in Article 148 is likely to be shortened, there does not appear to be any likelihood of serious harm to the mortgagor. He will certainly have to bring a suit within twelve years of his knowledge in order to eject the transferee. In such a suit, it is almost certain that the transferee is likely to put up a defence that at the Very least he is a sub-mortgagee of the mortgagee and is entitled to remain in possession so long as the mortgage is not redeemed. As soon as the transferee does that, he will be relegated to the position of a sub-mortgagee and the period fixed in Article 148 will become applicable. We, therefore, see no difficulty in holding that good faith of the transferee or mortgagee has no place in Article 134.

58. We would, accordingly, dismiss this appeal with costs.

Sapru, J.

59. I am indebted to the learned Chief Justice and my brother, Mushtaq Ahmad J., for enabling me to read their judgments and wish to supplement them by a few words which are intended to explain my attitude towards the question raised in this appeal.

60. The facts which have given rise to this appeal have been stated fully by Mushtaq Ahmad: J. and it is unnecessary to repeat them. The point that we have to decide in this case is whether the suit out of which this appeal arises is governed by Article 134 or by Article 148, Limitation Act. A comparison of the two articles will disclose that Article 148 has application to a suit against a mortgagee to recover possession or to redeem, 'whereas Article 134 applies to a suit against a person to whom the mortgagee in possession has transferred the property held by him for a valid consideration. Obviously, a suit for redemption of a usufructuary mortgage from the mortgagee in possession would not be covered by Article 134 but by Article 148. The words "bona fide" and "good faith" no longer figure in the Limitation Act since 1877. By Section 3, Limitation (Amendment) Act, I [1] of 1929, it has been enacted that the period of limitation will begin to run from the actual date of the knowledge of the transfer and not from the date of the transfer. In the cases which were cited before us undoubtedly the view has been taken by some Courts that the deletion of the words "good faith" from Article 134 had not, in any material respect, changed the law so far as the requirements of "good faith" are concerned. I am not prepared to agree with the reasoning of those cases. This Court has got to interpret a statute or an Act as it finds it. It has not to concern itself with the question of policy underlying it. In interpreting this article, we cannot forget that the words "bona fide" and "good faith" were at one time part of this article and they were deliberately taken out of it by the Legislature. Perforce we have to attach importance to the amendments which the Legislature has, in its wisdom, sought to make in this article. It may well be that the Legislature thought, as the learned Chief Justice suggests, that in the matter of the period of limitation the transferees of a mortgagee in possession should be placed on no lower footing than a mere squatter or trespasser who can perfect a title by 12 years adverse possession to the knowledge of the person whose property he has occupied. The amendment by Section 3, Limitation (Amendment) Act, I [1] of 1929, has laid down that it is only from the time that the mortgagor acquires knowledge of the transfer that limitation will start running against him. This amendment represents a substantial improvement over the state of affairs as they existed before 1929. It strikes me that the question whether the mortgagee in possession was honest or not in the transfer that he was making and whether the purchaser had made any inquiry as to the vendor's title are immaterial so far as this article is concerned and do not affect the rights of the purchaser who has given valuable consideration. I think that the language of the article is plain and unambiguous and we have no right to import words into it which are no longer there. By making suits for recovery of possession of immovable property by a mortgagee for a valuable consideration dependent upon their having been made bona fide or in good faith we shall be very nearly usurping the function of the Legislature. For this reason, I am in agreement with the view of my colleagues that this appeal should be dismissed with costs.

61. By the Court.--The appeal is dismissed with costs.