

## **Ram Raj Rai And Ors. vs Chedi Rai And Ors. on 8 September, 1953**

**Equivalent citations: AIR1954ALL212, AIR 1954 ALLAHABAD 212**

ORDER

Chaturvedi, J.

1. This revision arises out of proceedings under the U. P. Agriculturists' Relief Act. The applicants applied for redemption of an old mortgage under Section 12, Agriculturists' Relief Act. It was not disputed that the applicants were the legal representatives of the original mortgagor and th(sic) the opposite parties were the legal representative of the original mortgagee. The mortgage sought to be redeemed was executed some time before the year 1882.

2. The claim for redemption was resisted on the ground that there was no subsisting mortgage and that whatever the rights which the mortgagor had in the mortgaged property were lost to him by lapse of time. In other words, it was pleaded that the right of redemption was lost by reason of Article 148, Limitation Act, which provides 60 years for redemption of mortgages. Both the Courts have held that the mortgage sought to be redeemed came into existence more than 60 years back & consequently the mortgagor had lost his right to redeem the property. In this revision this finding of the two Courts below has been challenged.

3. It is not disputed before me that more than 60 years have elapsed from the date on which the mortgage sought to be redeemed was executed. It was argued that under Article 148 the mortgagor has a right to recover possession of the mortgaged property and 60 years' limitation should be reckoned from the date when the right to recover possession accrued, that is to say from the date when the mortgage debt was discharged. In other words, it is urged before me that the application under Section 12, Agriculturists' Relief Act is in substance, an application to recover possession of the property which was the subject-matter of a mortgage which had been paid off. Reliance has been placed upon a Bench decision of this Court in -- 'Ram Prasad v. Bishambhar Singh', AIR 1946 All 400 (A). The facts of that case were different. In that case the mortgagor had brought a suit to recover possession of the mortgaged property; and it was not, in reality, a suit for redemption of the mortgage but it was treated to be a suit for possession against a trespasser.

Section 12, Agriculturists' Relief Act contemplates that the application filed thereunder must be an application for redemption of a particular subsisting mortgage. Not only that, the section makes it further clear that the benefit of Section 12 will be given only before the suit for redemption is barred. It is, therefore, manifest that under Section 12, Agriculturists' Relief Act only an application for redemption of a subsisting mortgage can lie. It is impossible to treat the application for redemption as a suit for recovery of possession of the property. The case referred to above does not

apply to proceedings under Section 12, Agriculturists' Relief Act.

4. This view is in consonance with the view expressed by Seth J. in -- 'Shafiq Uddin v. Lakhani Singh', AIR 1950 All 60 (B). The following observation may be quoted with advantage:

"The plaintiff-applicant having chosen to put forward a claim for redemption cannot say, in order to save limitation, that the claim was not a claim for redemption but a claim for possession. The same view was held in -- 'Ram Palhawan v. Ummedi Ahir', AIR 1952 All 300 (C). There is a clear and marked distinction between a suit for redemption and a suit for possession of property against a trespasser who had continued to remain in possession after the mortgage was discharged."

5. The two Courts below were justified in throwing out the application under Section 12, U. P. Agriculturists' Relief Act as time-barred. The revision is without substance. It is accordingly dismissed with costs.