

Sita Ram Singh vs Gaya Prasad And Ors. on 20 February, 1953

Equivalent citations: AIR1953ALL620, AIR 1953 ALLAHABAD 620

ORDER

1. This is a plaintiff's application in revision arising out of proceedings under Section 12, U. P. Agriculturists' Relief Act (27 of 1934) read with Section 9, U. P. Debt Redemption Act (13 of 1940). The predecessors-in-interest of the applicant executed a usufructuary mortgage, which was sought to be redeemed in the present case, in the year 1855. One of the terms of the mortgage was that the profits were to be taken in lieu of interest. It was not a self-liquidating mortgage. The application under Section 12, 'U. P. Agriculturists' Relief Act read with Section 9 of the Debt Redemption Act was filed in the year 1946 and it was claimed that the entire mortgage, money had been paid up by the usufruct, calculating the same in accordance with the provisions of Section 9, U. P. Debt Redemption Act.

2. The trial Court allowed the application and passed a decree in favour of the applicants holding that the entire mortgage money had been paid up by the usufruct. In appeal it was held that the application was barred by time and consequently it was dismissed. In this application in revision the only point for consideration is whether the application of the applicants under Section 12, U. P. Agriculturists' Relief Act, was time-barred. Article 148, Limitation Act provides a period of 60 years for redemption of a usufructuary mortgage. The Article runs as follows:

"148. Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.

Sixty years When the right to redeem or to recover possession, accrues."

3. A suit for redemption of the mortgage in dispute became barred in the year 1915, and by virtue of Section 28 Limitation. Act the mortgagor having lost his right to have possession of the property by redemption, the title to the property became vested in the mortgagee and he became the owner of the property in 1915. It is not suggested that there was any provision for the mortgage becoming self-liquidating prior to 1915. The Agriculturists' Relief Act and the Debt Redemption Act came into force in 1935 and 1941 respectively. They allow for redemption of the mortgages but there is nothing in the Acts to show that their provisions apply to mortgages, the right of redemption of which had already been lost and the mortgagees had no longer remained mortgagees but had become owners of the property mortgaged. No doubt the Agriculturists' Relief Act and the Debt Redemption Act do affect vested rights and in that sense they are retrospective in so far as they affect the rights of the mortgagees in mortgages subsisting on the dates on which the Acts were passed, but they cannot, in our opinion, affect the rights of mortgagees who had before their commencement ceased to be mortgagees and had become owners of the property in their possession.

4. Learned counsel for the applicant has, however, relied on two decisions of this Court, --'Ram Prasad v. Bishambhar Singh', AIR 1946 All 400 (A) and -- 'Parasram y. Bindeshari', AIR 1953 All 33

(B). Both these decisions are, however, distinguishable. In 'AIR 1946 All 400 (A)' the mortgage in suit was made in November 1881. The mortgage was by conditional sale. The ordinary period of limitation for redemption of a mortgage would have expired in 1941, i.e. after the commencement of the Debt Redemption Act. The document in that case was, therefore, a mortgage on the date on which the Debt Redemption Act came into force, and therefore that Act was applicable to it. In 'AIR 1953 All 33 (B)' the mortgage in dispute was made in Jeth 1881, i.e. June 1881. In that case also the limitation for redemption had not expired before the Debt Redemption Act came into force. The two cases are, therefore, distinguishable from the facts of the present case.

5. The law on the subject is clear. Under Article 148, Limitation Act the period of sixty years is provided both for the redemption of a mortgage and for recovery of possession of a mortgaged property. The period of limitation in the first case begins from the time when the right to redeem accrues and in the second case begins when the right to recover possession arises. Unless there is a term in the mortgage that it could not be redeemed for a certain period, the right to redeem accrues on the execution of the mortgage. After 60 years of the execution of the mortgage or after the expiry of the term when the right to redeem accrues, the right to redeem is barred. But in certain cases the right to recover possession of the mortgaged property may accrue later for instance, in a self-liquidating mortgage the right to recover possession of the property 'accrues when the mortgage money has been fully liquidated. On the satisfaction of the mortgage money, therefore, a fresh cause of action for the recovery of the mortgaged property without redemption accrues to the mortgagor. These two different cases, namely the right to redeem and the right to recover possession are separately dealt with in the Transfer of Property Act. Section 60 deals with the right to redeem and Section 62 deals with the right to recover possession. Though a mortgage may not be a self-liquidating mortgage in the first instance, it may become a self-liquidating mortgage at a later stage, e.g. by virtue of a statutory provision. The Debt Redemption Act in reducing the rate of interest and in providing that the usufruct shall be calculated and its excess over the interest will be taken in satisfaction of the principal amount has in a way effected a revolutionary change in the terms of all subsisting usufructuary mortgages. In a sense they may be said to have become self-liquidating mortgages. But the mortgages must be subsisting on the date on which the Debt Redemption Act came into force. If the right to redeem the mortgages had already expired before the Act came into force, there is nothing on which the Act will operate.

6. There is no force in this application. It is dismissed with costs.