

## Chouthi Raj vs Mst. Sumitra Devi on 4 February, 1952

**Equivalent citations: AIR1953ALL146, AIR 1953 ALLAHABAD 146**

### JUDGMENT

Mushtaq Ahmad, J.

1. Both these are applications in revision by persons seeking redemption of two mortgages, each being the subject of a separate application under Section 12 of the U. P. Agriculturists' Relief Act 26 of 1934.

2. The mortgages were each dated July 16, 1883, executed by Bhairo, grand-uncle of the plaintiffs 1 and 3 and Mst. Rukia, widow of a deceased brother of Bhairo. The mortgage to which the revision first mentioned relates covered certain fixed-rate plots, some bamboo clumps and a 'nim' tree, whereas the mortgage to which the other revision relates consisted only of occupancy plot

3. Redemption was sought on the usual allegation that the entire mortgage money in each case had been paid off from the usufruct of the property.

4. In defence the applicant's allegation that they were heirs of the mortgagors and as such entitled to claim redemption of the mortgages was denied, and it was further denied that the mortgage money had been paid off in the manner stated by the applicants.

5. The trial Court allowed redemption of the mortgages, holding that the plaintiffs were the heirs of the mortgagors and that the entire money had been paid off from the usufruct of the property. This decree was reversed by the lower appellate Court which held that the applicants had not proved themselves to be the heirs of the mortgagors.

6. Only two questions have been argued before me by Mr. B. L. Dikshit, learned counsel for the applicants:

1. that the present applicants having claimed a tenancy right as heirs to the mortgagors and the same not having been admitted by the opposite parties, the trial court should have framed an issue on that question and submitted the record to the appropriate Court for the decision of the same, and

2. that Section 12 of the U. P. Agriculturists' Relief Act was inapplicable to a claim for redemption of occupancy plots,

7. It will be seen at once that, while the first question is common to both the revisions, the second is peculiar only to Civil Revision No. 87 of 1949 relating to occupancy plots, I propose to deal with

them seriatim.

8. As regards the first point, learned counsel has referred me to a single Judge decision in --Ram Kirpal v. Bhagwati Saran', 1949 All LJ 122 and a Bench ruling in -- 'Balram Singh v. Dudh Nath', 1948 All LJ 296. In the former it was held that a proceeding under Section 12 of the Agriculturists' Relief Act could be treated as a suit and a reference under Section 288 of the U. P. Tenancy Act could be made in such a proceeding. In the latter also it was laid down that proceedings under Section 12 of the Agriculturists' Relief Act were proceedings in a suit before a civil Court to which the Arbitration Act was applicable.

9. So far as the point of a proceeding under the said section being a suit is concerned, there is no dispute. The question, however, whether a revenue Court seized of a proceeding under Section 12 of the U. P. Agriculturists' Relief Act is a civil Court for all purposes is not so simple. Of course, learned counsel for the applicants contends on the basis of the rulings just mentioned that such a Court is, for all purposes, a civil Court, so that, even where an application under Section 12 of the Act is made to a Collector, he would be a civil Court also within the meaning of Section 288(1) of the U. P. Tenancy Act. I find it difficult to endorse this contention. This section 'inter alia' provides :

"If in any suit relating to agricultural land instituted in a civil Court, any question regarding tenant right arises and such question has not previously been determined by a Court of competent jurisdiction, the civil Court shall frame an issue on the plea of tenancy and submit the record to the appropriate revenue Court for the decision of that issue only."

If the argument of the learned counsel is accepted it would be apparent that under this provision a revenue Court seized of an application under Section 12 of the U. P. Agriculturists' Relief Act will have to refer an issue of tenancy to itself. On the other hand, if the section was applied only to those Courts which are, for all purposes, civil Courts, there would be no such anomaly in applying the same. With this position in view, the only reasonable interpretation which I can put on the observations relied upon by the learned counsel in the two cases referred to above is that Section 288 of the Tenancy Act would apply to such proceedings under Section 12 of the U. P. Agriculturists' Relief Act as have been filed in the civil Court, that is, in cases where the principal money secured exceeds Rs. 500/- as provided by Section 10 of the latter Act. I am, therefore, unable to accept this contention of the learned counsel.

10. As regards the second point urged by the learned counsel with particular reference to Civil Revision No. 87 of 1949, he relied on the Full Bench decision of this Court (Lucknow Bench) in -- 'Mahabal Singh v. Ram Raj', 1950 All LJ 713 and argued that the property mortgaged in this case being occupancy plots, no application under Section 12 of the Agriculturists' Relief Act could be filed at all. It is conceded that the applicants had quite rightly applied under that section for the redemption of the particular mortgage in view of the law then existing under the rulings of this Court and that it was only later that a change was introduced and such an application was put beyond the purview of the said section. The applicants themselves having sought redemption of this mortgage under Section 12 of the U. P. Agriculturists' Relief Act and they having done so in strict

accordance with the law then in force, I am not prepared to give a retrospective effect to the position that may now be deemed established under the Full Bench ruling above mentioned. The present case is after all a revision, and it is entirely discretionary with me to interfere or not. In every view of the case it is fully settled that, even in the case of an occupancy holding mortgaged with possession, the mortgagor is not entitled to recover the same without paying to the mortgagee what he has received from the latter. This would, of course, not be in a decree for redemption strictly so called, but would take the form of a condition of payment imposed on the mortgagor seeking to be restored to possession of the holding. This is a circumstance which has naturally influenced me in refusing to exercise my discretion in the applicants' favour by interfering with the judgment of the lower appellate Court purely on a preliminary ground. I am, therefore, not inclined to entertain this argument either.

11. In the result, both the applications are dismissed with costs.