

## **Chhedi Sahu And Anr. vs Mst. Sheoraji And Ors. on 1 May, 1953**

**Equivalent citations: AIR1953ALL708, AIR 1953 ALLAHABAD 708**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

Malik, C.J.

1. This appeal has arisen out of proceedings initiated by an application under Section 8 of the U. P. Debt Redemption Act, Act No. 13 of 1940, for amendment of a decree for redemption.
2. The facts in brief are that on 5-1-1880, one Janki and his son Kanhai mortgaged a house now in dispute, to one Ram Sarup for Rs. 299/-. The mortgage was for possession. On 2-1-1883, the two mortgagors executed a simple mortgage in resp'ect to the same house in favour of the same mortgagee for Rs. 299/- and stipulated therein that it would not be permissible for the mortgagors to redeem the mortgage of 1880 without paying up the amount due under the simple mortgage of 1883.
3. The mortgagees remained in possession since 1880. Janki and Kanhai both died, and Kanhai's heirs who inherited the property transferred the equity of redemption on 28-8-1936, to the plaintiffs Mt. Sheoraji and Mt. Habiban. They left a sum of Rs. 299/- in their hands for redemption of the possessory mortgage of 1880 and stipulated that the transferee would be liable for payment of whatever amount was found due under that mortgage. No mention however was made of the 1883 mortgage. When Mt. Sheoraji filed a suit \_for redemption of the mortgage of 1880 the mortgagee relied on the mortgage of 1883 and claimed that before the mortgage of 1880 could be redeemed the plaintiff had to pay the amount due under the mortgage of 1883 as well. This plea evidently found favour with the trial Court and was affirmed by this Court by an order dated 5-11-1942, with the result that the plaintiffs were required to pay Rs. 3,942/- the amount due under both the mortgages of 1880 and 1883 before the mortgage of 1880 could be redeemed.
4. In the year 1943 the plaintiff filed an application under Sections 8 and 9 of the Debt Redemption Act for redemption of interest allowed to the mortgagee and for amendment of the decree. This application was dismissed by the learned Munsif on the 18th August 1943, as in his view the amount was not a loan the liability having been transferred by the original mortgagors to the transferees. The defendants had made a declaration that they would not proceed against any land, agricultural produce or person of the agriculturist, but the learned Munsif held that Section 4 of the Debt Redemption Act applied only to a case where the mortgagee had filed a suit to realise the amount

due to him from an agriculturist and not to a suit for redemption filed by an agriculturist. Against the order rejecting the application under Sections 8 and 9 of the Debt Redemption Act, the plaintiff filed an appeal before the learned Civil judge of Gorakhpur who allowed the appeal on the 11-4-1944 and reduced the amount which the plaintiffs were required to pay for redemption of the mortgage. On a further appeal to this Court a learned single Judge dismissed the appeal on the 6th of May 1946, but granted to the defendants leave to appeal. The defendants have now filed this appeal.

5. It is contended on their behalf that the order passed by the learned Munsif on the 18th August 1943, was not an appealable order and neither the learned Civil Judge of Gorakhpur nor the learned single Judge of this Court had any jurisdiction to entertain appeals. Reliance is placed by learned counsel on certain observations made in a Full Bench decision of this Court in -- 'Badri Prasad v. Shankar Lal', AIR 1950 All 713 (A). In view of that decision in which several other Full Bench decisions of this Court have been considered, it is not necessary for us to discuss the law at any length. That case however has settled the law, so far at least as this Court is concerned, that an order under Section 8 of the Debt Redemption Act refusing to amend a decree is not an order under Section 47, Civil P. C. This point was referred to the Full Bench, as in -- 'Mt. Ketki Kunwar v. Ram Sarup', AIR 1942 All 390 (B), and other cases where an application for amendment was made during the pendency of execution proceedings this Court had held that the order for amendment of the decree was an order under Section 47, Civil P. C.

6. The decree for redemption was passed on 5-11-1942. That decree was no doubt appealable under Section 96, Civil P. C. The application for amendment of the decree was filed in the year 1943. As the application was dismissed by the learned Munsif the decree was not amended. The Debt Redemption Act makes no provision for an appeal against an order dismissing an application under Section 8 of the Debt Redemption Act. In -- 'Manmohan Lal v. Raj Kumar Lal', AIR 1946 All 89 (C), the question for decision was slightly different. But the law on the point was discussed whether when a decree was amended under Section 8 of the Debt Redemption Act, an appeal would lie from the amended decree. The view expressed by some of the learned Judges was that the amended decree would be appealable but limitation would run from the date of the original decree and an application under Section 5 of the Limitation Act might be necessary where the period of limitation for appeal from the decree on the date it was originally passed had expired. Some observations were made in -- 'Badri Prasad's case' (A) that the amended decree as such was appealable under Section 96, Civil P. C. In any case, the question whether the amended decree as such, or the original decree as amended is appealable is of mere academic interest. Section 8, Sub-section (2) provides that the amended decree shall bear the same date as the original decree. An application under Section 5 of the Limitation Act would therefore be required unless the period of limitation for appeal from the date of the original decree had not expired.

7. Where, however, no amendment has been made and the application under Section 8 has failed and has been rejected, the order can be appealable only if there is a law providing for an appeal. It is now well settled that an appeal is a creature of statute and unless a right of appeal is given by some law an order is not appealable. We have already said that it has been held by this Court that such an order is not an order under Section 47, Civil P. C. It is not an order which is appealable under the provisions of Section 104 read with Order 43, Rule 1, Civil P. C. There being no provision for appeal

the order passed by the learned Munsif dismissing the application for amendment was not appealable and no appeal lay to the learned Civil Judge or to the learned single Judge of this Court.

8. Mr. Sri Narain Sahai learned counsel for the respondents has asked us to treat this case as a civil revision under Section 115, Civil P. C. against the order of the learned Munsif dated 18-8-1943. It is doubtful whether a Letters Patent Appeal filed under the permission granted by a learned single Judge of this Court can be treated as a revision against an order passed by the learned Munsif, But even if we were to allow this prayer, the difficulty would arise that there being no error of jurisdiction in the order of the learned Munsif, it being at best an error on a question of law, we shall have no jurisdiction under Section 115 of the Code to revise the order. We therefore, do not see any reason for granting this request.

9. The result, therefore, is that this appeal is allowed, and the decrees passed by the learned single Judge as also by the learned Civil Judge of Gorakhpur, are set aside. The order of the learned Munsif dated 18-8-1943, therefore will remain operative.

10. As the objection as regards jurisdiction was not taken either in the lower appellate Court or in this Court, we direct the parties to bear their own costs in all the Courts.