

## Shiv Lal & Ors vs Chet Ram & Ors on 9 September, 1970

**Equivalent citations: 1971 AIR 2342, 1971 SCR (2) 104**

**Author: K.S. Hegde**

**Bench: K.S. Hegde, J.C. Shah, A.N. Grover**

PETITIONER:

SHIV LAL & ORS.

Vs.

RESPONDENT:

CHET RAM & ORS.

DATE OF JUDGMENT:

09/09/1970

BENCH:

HEGDE, K.S.

BENCH:

HEGDE, K.S.

SHAH, J.C.

GROVER, A.N.

CITATION:

1971 AIR 2342

1971 SCR (2) 104

ACT:

Evidence Act (1 of 1872), ss. 90 and 114(e) and Punjab Land Revenue Act, s. 44-Presumptions under-Scope of.

Redemption of Mortgages (Punjab) Act (2 of 1913), s. "cope of.

HEADNOTE:

Suits were filed by the representatives of the mortgagors to redeem ,certain mortgages beyond 60 years from the dates of the mortgages. In order to get over the bar of limitation the plaintiffs relied upon certain acknowledgments made by the mortgagors. The acknowledgments were alleged to have been made more than 30 years ago in mutation proceedings and certified copies of the statements were produced. With respect to .Some mortgages, applicants were made under s. 4 of the Redemption of Mortgages (Punjab) Act, 1913, and they were dismissed under s. 10. It was contended that the suits filed with respect to those mortgages were within time under s. 12 of that Act, because, they were filed within one year

of the date of the dismissal of the applications.

HELD : (1) As the originals of the acknowledgments were not produced and no witness was examined to speak to the fact that the persons who we're shown to have signed the originals have in fact signed them or that they were the mortgagors or their representatives, there was no proof of the signatures; and the Court cannot raise any presumption under s. 90 of the Evidence Act. [106 F-G]

Harihar Prasad Singh v. Mst. of Munshi Nath Prasad [1956] S.C.R. 1, followed.

Section 114(e) of the Evidence Act does not apply because the identification of an executant or the genuineness of a signature in a statement filed before an official has nothing to do with the regularity of his act, unless he had a duty to take the signature in his presence and to identify the person who signed. [107 B-C]

Section 44 of the Punjab Land Revenue Act deals with the presumption as regards entries in the record of rights, but this case is not concerned with any such entry. [107 A]

(2) Section 12 of the Redemption of Mortgages (Punjab) Act, 1913, merely provides that a summary order made under ss. 6 to II of that Act becomes final unless a suit to establish the rights of the mortgagors is instituted within the prescribed period of one year. From this provision it cannot be held that the period of limitation fixed for redemption of mortgages is enlarged. [108 G-H]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1250 and 1251 of 1966.

Appeals by special leave from the judgments and decrees dated April 1, 1965 of the Punjab High Court in Civil Regular Second Appeals Nos. 138 and 139 of 1964.

K.L. Gosain and Janardan Sharma, for the appellants (in both the appeals).

Naunit Lal, for the respondents Nos. 1 to 7 and 9 (in both the appeals).

The Judgment of the Court was delivered by Hegde' J. The appellants in these appeals are the representatives of the mortgagees of the suit properties. The respondents in both these appeals claim to represent the interest of the mortgagors. Civil Appeal No. 1250 of 1966 arises from Suit No. 280 of 1961 in the court of Senior Sub Judge, Rohtak and Civil Appeal No. 1251 of 1966 arises from Suit No. 334 of 1961 on the file of the same judge. Both the suits were suits for redemption. The trial court dismissed both the suits on two grounds viz. (1) that Kura, the person from whom the plaintiffs claim to have purchased the rights of the mortgagors was incapable of entering into a contract as he was insane. Hence the sale deeds executed by him are void and (2) the claim for redemption in respect of the various mortgages sought to be redeemed excepting the one executed

on April. 26, 1912 is barred by limitation. The learned District Judge allowed the appeals and decreed both the suits excepting as regards the mortgage dated January 20, 1878. In second appeal Capoor J. of the Punjab High Court confirmed the decision of the learned District Judge. The Letters Patent Appeals filed by the appellants were summarily dismissed. Thereafter these appeals were brought after obtaining special leave from this Court. Both the learned District Judge as well as the learned Judge of the High Court have concurrently come to the conclusion that there is no satisfactory evidence to show that Kura was insane at the time he sold the suit properties to the plaintiffs. This is a finding of fact and we see no reason to go behind it.

The only other ground on which the appellants are resisting the plaintiffs' claim to redeem the mortgages in question is that according to them the claim for redemption is barred by limitation. For dealing with that question, it will be convenient to take up the two appeals separately. In Suit No. 28 1, the plaintiffs sought redemption of four different mortgages. Those mortgages were said to have been executed on the following dates:--

(1) April 26, 1912; (2) December 21, 1895; (3) December 18, 1901 and (4) January 20, 1879.

235Sup.CI/71 The original mortgage deeds or even their registration copies have not been produced. The execution of those mortgages have been sought to be proved on the basis of certain mutation proceedings, The courts below have relied on those proceedings to prove the factum of the mortgages sought to be redeemed. The execution of those mortgages was not challenged before us. So far as the suit relating to the mortgage executed on January 20, 1878 (property described in plaint Item No. 4), the plaintiffs sought to withdraw their suit on the ground that they are not able to prove their case on the basis of the material in their possession. The learned trial judge did not permit them to withdraw that part of their suit. He dismissed the plaintiffs' claim in that regard. His judgment was upheld in appeal as well as in second appeal. That part of the plaintiffs' case was not pressed before us. Now coming to the mortgage said to have been executed on April 26, 1912 (the concerned property is described in plaint Item No. 1), the claim for redemption is admittedly within time as the suit was filed on November 27, 1961, the period of limitation being 60 years.

This leaves us with mortgages said to have been executed on December 21, 1895, (relating to plaint Item No. 2) and on December 18, 1901 (relating to plaint Item No. 3). We shall first take up the mortgage said to have been executed on December 21, 1895. Prima facie the suit in respect of this property is barred by time but it is said that in view of the acknowledgment made by mortgagors under the original of Ex. P-5 dated 22.6.1906, the suit is within time. There is no satisfactory material to show that Ex.P-5 relates to the mortgage in question. It is not necessary to go into that question in detail as in our opinion, it was impermissible for the courts below to rely on Ex.P-5 for the purpose of acknowledgment Ex. P-5 is a certified copy of a statement said to have been made in a mutation proceeding. Its original has not been produced. No witness has been examined to speak to the fact that the persons who are shown to have signed the original have in fact signed the same or those persons were the mortgagors or their representatives. The signature on the original cannot be proved by production of a certified copy. Nor can the courts raise any presumption under s. 90 of the Evidence Act in that regard see Harihar Prasad Singh and anr. v. Mst. of Munshi Nath Prasad

and Ors.(1) The High Court and the 1st appellate court erroneously thought that they could presume that the persons mentioned as the executants in the copy have signed the original on the strength of S. 44 of the Punjab Land Revenue Act and s. 114 (e) of the Evidence Act. Section 44 of the Punjab Land Revenue Act deals with the presumption as regards an entry (1) [1956] S.C.R. 1.

in the record of rights. Herein we are not concerned with any entry in the record of rights. We are, concerned with the genuineness of the, signature in the original of Ex. P- 5 and the identification of the persons who signed it. Hence that section affords no aid. Section 114(e) of the Evidence Act says that court may presume that judicial and official acts have been regularly performed. Herein we are not concerned with the regularity of the performance of any official act. The identification of an executant or genuineness of a signature in a statement filed before an official as nothing to do with the regularity of his act unless it is shown that he had a duty to identify the person who signed it and further to take the signature in his presence. Therefore Ex. P-5 cannot serve as an acknowledgment, of the mortgage. Hence the plaintiffs claim to redeem the mortgage in respect of item No. 2 of the plaint must fail.

Now coming to plaint item No. 3, the plaint shows that the mortgage in question was executed on December 18, 1901, The original mortgage deed or its registered copy has not been produced. For the proof of execution of the mortgage the plaintiffs relied on Ex. P-8, a certified copy of a mutation proceeding. That copy shows that the mutation in question was ordered on 12th June 1901. Therefore the concerned mortgage must have been executed earlier than that date. It appears that the plaintiffs have deliberately given a wrong date of the mortgage in the plaint with view to bring the suit within the period of limitation. I The learned District Judge has opined that the claim for redemption of this item of-property is also within time in view of Ex. P-8. Here again no evidence was led to show that the original statement was signed either by the mortgagors or by their representatives. The original was not produced in court. Ex. P-8 is only certified copy. By merely producing a copy, it cannot be said hat the plaintiffs have succeeded in proving that the signature in original statement is that of the mortgagors or their represents gives. As discussed earlier the plaintiffs cannot take the benefit of s. 90 of the Evidence Act or s. 44 of the Punjab Land Revenue Act or s. 114(e) of the Evidence Act to prove that the original was signed by the mortgagors or their representatives. Hence the plaintiffs' claim in respect of plaint item No. 3 must also fail. In the result Civil Appeal No. 1250 of 1966 is partly allowed and the plaintiffs' claim for redemption of plaint items Nos. 3 and 4 is dismissed and the decree for redemption of plaint item No 1 is upheld.

Now we shall take up Civil Appeal No. 1251 of 1966 arising from Suit No. 334 of 1961. Therein redemption of two mort- gages said to have been executed on June 19, 1894 and May 15, 1896 was sought. Prima facie the suit is barred by limitation.

But it was contended and that contention was accepted by the appellate court and the High Court that the suit is within time in view of (1) the acknowledgments made by the mortgagors or their representatives on several occasions, the last of which was on June 25, 1919 and (2) in view of the application made by the plaintiffs-respondents under S. 4 of the Redemption of Mortgages (Punjab) Act, 1913 (Act No. 11 of 1913). We shall first take up the question of acknowledgments. The acknowledgments in question were ought to be proved by production of certain certified copies. The

originals of those copies were not produced. No evidence was led to show that the originals were signed either by the mortgagors or by their representatives. For the reasons earlier mentioned those copies cannot serve as acknowledgments.

Now coming to the application made under S. 4 of the Redemption of Mortgages (Punjab) Act, 1913, the same was made on May 16, 1959 and it was dismissed on April 18, 1961. There in the parties were referred to a civil suit. Even if the period taken in prosecuting the said application is excluded in computing the period of limitation, the suit for redemption is admittedly barred. But what was urged on behalf of the plaintiffs is that in view of s. 12 of the Redemption of Mortgages (Punjab) Act, 1913, the plaintiffs were entitled to bring the suit within one year from April 18, 1961, the date on which their application was dismissed. There is no dispute that for the suit contemplated by the aforesaid s. 12, the period of limitation prescribed is one year from the date of the order. The dismissal of the petition in this case was made under s. 10 of the Redemption of Mortgages (Punjab) Act, 1913. Therefore the order made on that application comes within the scope of S. 12. But the real question is whether S. 12 enlarges the period of limitation for a redemption suit. That section to the extent material for our present purpose reads as follows "Any party aggrieved by an order made under ss. 6, 7, 8, 9, 10 and 11 of this Act may institute a suit to establish his rights in respect of the mortgage; but, subject to the result of such suit, if any, the order shall be conclusive."

This section merely provides that a summary order made under ss. 6, 7, 8, 9, 10 and 11 of the Redemption of Mortgages (Punjab) Act, 1913 becomes final unless a suit to establish the rights of the mortgagors is instituted within the prescribed period. From this provision we are unable to hold that in view of that section, the period of limitation fixed for redemption of mortgages can be enlarged. Several decisions of the Lahore High Court holding that if a suit as required by S. 12 is not filed within the time prescribed then the right of redemption will be lost even if the time prescribed under the Limitation Act for instituting a suit for redemption has not expired. It is not necessary to go into the correctness of those decisions though prima facie we are inclined to accept their correctness, because they merely lay down that if any party aggrieved by an order under ss. 6, 7, 8, 9, 10 and 11 of the Redemption of Mortgages (Punjab) Act, 1913 does not institute a suit to establish his rights in respect of the mortgage within the time prescribed his right to sue for redemption is lost. Those decisions do not support the contention of the plaintiffs that a mortgagor whose application for redemption under s. 4 of the aforesaid Act is dismissed can file a suit for redemption of the mortgage even though the limitation prescribed for such a suit had expired, if only he files that suit within a period of one year from the date of the order dismissing his petition under s. 4. No decision taking that view was brought to our notice. What is made conclusive by s. 12 is the order made by the Collector if the suit as contemplated by s. 12 is not instituted within the prescribed time. That provision does not lend any support for the contention that if an application which fulfils the requirements (4 s. 4 is brought then the period of limitation prescribed for a redemption suit becomes irrelevant.

For the reasons mentioned above Civil Appeal No. 1251 of 1966 is allowed and the plaintiffs' suit No. 334 of 1961 is dismissed. Appellants had falsely pleaded that Kura was insane. Because of that plea the plaintiffs had to adduce considerable evidence. Taking into consideration the various circumstances appearing in these cases we think it would be appropriate to direct the parties to bear

their own costs throughout.

V.P.S.  
allowed.

Appeals