

2012 Y L R 2583

[Lahore]

Before Muhammad Ameer Bhatti, J

MUHAMMAD TUFAIL and 42 others---Petitioners

versus

AHMED ALI and others---Respondents

Civil Revision No.2413 of 2003, heard on 27th September, 2011.

West Pakistan Redemption and Restitution of Mortgaged Lands Act (XIX of 1964)---

---S.7---Civil Procedure Code (V of 1908), S.11---Redemption of mortgage---Res judicata, principle of---Applicability---Scope---Order of Collector refusing to redeem mortgage---Filing of suit under S.7 of West Pakistan Redemption and Restitution of Mortgaged Lands Act, 1964---Validity---Order passed by revenue hierarchy could be challenged before Civil Court under S.7 of West Pakistan Redemption and Restitution of Mortgaged Lands Act, 1964---Decision rendered by revenue hierarchy would have no relevance---Question of res judicata would not arise in such suit.

Abdul Haq v. Ali Akbar and others 1999 SCMR 2531 ref.

Dr. Muhammad Irtiza Awan for Petitioner.

Ch. Muzaffar Ali Khan for Respondent.

Date of hearing: 27th September,2011.

JUDGMENT

MUHAMMAD AMEER BHATTI, J.---Through this C.R. the concurrent findings of facts recorded by both the Courts below while decreeing the suit of the respondents for redemption of land in dispute as mentioned in para 2 of the plaint, has been challenged.

2. The brief facts which are necessary for the just decision of this case are that the land in dispute was mortgaged in the year 1868 by Kareem Bukhsh (Karam Bukhsh), predecessor-in-interest of the respondents to Umer Din, predecessor-in-interest of the petitioners. The suit for redemption of suit land was filed by the respondents on 19-1-1994, however, the respondents filed the written statement on 21-2-1995, wherein he raised the preliminary objections; time barred, res judicata and no cause of action, specifically apart from other and also controverted the facts of the case. From the divergent pleadings of the parties, seven issues were framed. Parties led their evidence and after concluding the case, the learned Trial Court vide judgment dated 17-3-2003, decreed the suit, however, the appeal of the petitioners was dismissed vide judgment and decree dated 13-9-2003.

3. Learned counsel for the petitioners contends that the suit of the respondents was hopelessly time-barred. The respondents have no cause of action and res judicata but both the Courts below have not considered these legal objections according to the available record of the case. Learned counsel for the petitioners further contends that Ex.D.1 & 2 reflect the name of Karam Bukhsh instead of Kareem Bukhsh. Since there is owner of land was Kareem Bukhsh and the present respondents are the legal heirs of Kareem Bukhsh hence they are not aggrieved persons who filed this suit. On the issue of limitation, the learned counsel for the petitioners contends that since the land was mortgaged in the year 1856 instead of 1868 and it depicts from Exh.D.2 hence the suit has been wrongly decreed by both the Courts below. in the various judgments of this Court as well as the Hon'ble Supreme Court, it has been held that if any mortgagor does not come to get the land redeemed within 60 years, hence the mortgagor lost the statutory right to get the land redeemed. He further contends that if the date is not fixed in the mortgaged document then the date of mortgage will be considered for computing the limitation for redemption. So far as the question of res judicata is concerned, the learned counsel for the petitioners contends that earlier the respondents have filed the petition before the Collector for redemption of the said land who dismissed it and the decision of the Collector is in the way of the respondents and according to the principle of res judicata, the respondents have no right to file this suit and the suit is hit by the principle of res judicata. Lastly, the learned counsel for the petitioners contends that the points have not taken into consideration by both the Courts below hence the judgment of both the Courts below are against the dictum laid down by this Court as well as the Hon'ble Supreme Court hence the same are not sustainable in the eye of law.

4. Conversely, the learned counsel for the respondents contends that the petitioners have failed to point out any illegality or irregularity and misreading or non-reading of evidence committed by both the Courts below. The learned counsel for the respondents contends that they are the legal heirs of Kareem Bukhsh as written in the document as Karam Bukhsh. It does not make any difference, as the question of fact has been concurrently decided by both the Courts below after considering the evidence and giving due weightage to it hence question of facts cannot be re-agitated in the revision petition. So far as the question of limitation is concerned, the learned counsel for the respondents contends that the rights of mortgage have been shown out to some Karishan Singh in the year 1926 and then it was again obtained from Karishan Singh by the predecessor-in-interest of the present petitioners in 1940. So in view of the law laid down by the Hon'ble Supreme Court enunciated in Abdul Haq v. Ali Akbar and others (1999 SCMR 2531).

"The learned Judge in Chambers while reverting to the original mortgage in the instant case observed that it was created through Mutation No.197 dated 19-4-1918; that when the "matter came before the Courts of judicial hierarchy four times and every time it was held that through Mutation No.822 of 1-12-1944 the rights of mortgage were purchased and through Mutations Nos.823 and 823/1 of 11-12-1944 it was redeemed and recreated and subsequently through Mutations Nos.13 and 14 attested on 7-2-1948, a novation of contract had taken place and a fresh period of limitation had started, thereby rendering the prescriptive claim as premature". The learned Single Judge was, therefore, of the considered view that Abdul Haq petitioner had for the first time purchased the mortgagee rights through Mutation No.822 attested on 1-12-1944. It was redeemed by means of Mutation No.823 dated 11-2-1994 "but this mutation though entered of "Fak-e-Takmeeli" and additional mortgaged charge was altered yet the learned Single Judge declined to treat it merely as of "Fak-e-Takmeeli" because new mortgagee vide Mutation No.823/1 had been created by bringing in two other persons as mortgagees in addition to Abdul Haq petitioner. The learned Judge, therefore, termed this transaction as a novation of the contract giving fresh start of limitation. Then Mutation No.13, dated 7-2-1948 was referred to by virtue whereof the mortgage was redeemed from all the three persons and once again it was mortgaged to Abdul Haq petitioner with the increase of charge as well. The learned Single Judge interpreted this transaction as a novation of contract because in addition to additional charge, the old mortgagees including Abdul Haq petitioner, were ousted and thereafter, new mortgage was created in favour of the petitioner".

The case of the petitioners at the time of filing of the suit was within limitation and both the Courts below have rightly decided the issues in favour of the respondents. So far as the question of res judicata is concerned, the learned counsel for the respondents contends that Section 7 of the Redemption and Restitution of Mortgaged Lands Act, 1964 provides the remedy before the learned Civil Judge against the order of the revenue authorities who refused to redeem the land

hence the decision of the Collector who otherwise required to be challenged in the suit does not create any rights in favour of the mortgagee or against the mortgagor for applying principle of res judicata.

5. I have considered the arguments of the learned counsel for the parties and perused the record with their assistance.

6. The answer of all three questions as raised by the learned counsel for the petitioners have been openly and legally answered by the learned counsel for the respondents and I find no illegality or irregularity in the judgments passed by both the learned Courts below. Since the question of res judicata is not applicable, as the remedy provided under section 7 against the order of the revenue authorities hence the decision made by the revenue hierarchy cannot be considered for applying the principle of res judicata. The order passed by the revenue hierarchy has been provided under section 7 to be challenged before the Civil Court, so the Civil Court has rightly exercised the power in accordance with law and the decision made by the revenue authorities has no relevancy rather this order is liable to be challenged as envisaged by section 7 of the Redemption and Restitution of Mortgaged Lands Act, 1964 hence the assertion of the petitioners is not sustainable. It is appropriate to reproduce section 7 of the Redemption and Restitution of Mortgaged Lands Act, 1964 for ready reference:--

"Saving of suits to establish rights. Any party aggrieved by an order of the Collector passed under section 5 or 6 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".

So far as the point of limitation is concerned, as Hon'ble Supreme Court has already held that subsequent mortgage will be considered for redemption of the mortgage for holding the parameter of limitation hence the attack of the petitioners on the point of limitation on the suit of the present respondents is against the dictum laid down by the Hon'ble Supreme Court which cannot be entertained. So far as the questions of facts are concerned, since it has been dealt with by both the learned courts below very efficiently hence this Court feels no hesitation to refute the contention of the learned counsel for the petitioners.

7. For what has been discussed above, I find that there is no illegality or irregularity committed by both the learned courts below hence this petition has no merits, dismissed accordingly.

SAK/M-364/L

Petition dismissed.