

PESHAWAR HIGH COURT, BANNU BENCH

FORM OF ORDER SHEET

Date of Order or proceedings	Order or other proceedings with signature of Judge(s).
(1)	(2)
25.6.2020	<p><u>C.R No. 71-B/2020</u></p> <p><u>Present:</u> Mr. Mukhtiyar Ali Khan Khattak, Advocate for petitioners. ***</p> <p><u>Sahibzada Asadullah, J.-</u> Through this Civil Revision petition, petitioners have challenged vires of judgment dated 29.6.2019 passed by the learned Civil Judge-III, Karak, whereby preliminary decree of redemption was granted in favour of respondents/plaintiffs and judgment dated 21.01.2020 of learned Additional District Judge-II, Karak who dismissed appeal of petitioners.</p> <p>2. Brief facts arising out of this Revision Petition are that the petitioner filed a suit against petitioners for possession through redemption of property measuring 03 kanal 04 marla situated at Mouza Esak Tehsil and District Karak detail whereof was fully given in the headnote of the plaint. It is averred in the plaint that originally the ownership of predecessor in interest of respondents/plaintiffs namely Lal etc. who transferred the suit property by way of mortgage in favour of Ramzan and Khushamad sons of Azam through his paternal uncle Fateh Raz. The suit property</p>

was mortgaged for period of eight years against mortgaged money of Rs. 15 (Kabuli) British currency. The said mortgagees subsequently transferred the mortgaged rights by way of sale in favour of two persons namely Farhad Jan son of Mangal Jan and Majan son of Bakhmal vide mutation No. 9049 dated 25.5.1966. The respondents/plaintiffs after death of their predecessor requested the defendants for redemption of the suit property subject to payment of mortgaged money but they refused. After service of summon, the suit was vehemently opposed by the petitioners while submitting their written statement, controverting the facts as alleged by the petitioners in their plaint. The learned trial court vide impugned judgment dated 29.6.2019 passed preliminary decree of redemption in favour of respondents/plaintiff. Not contented with the said judgment and decree, the petitioners filed RCA, which was dismissed by learned Additional District Judge-II, Karak vide judgment dated 21.01.2020, hence, this Revision Petition.

3. The contention of learned counsel for the petitioners is that the evidence available on record has not been examined by both the learned Courts below in its true perspective and the issues have not been decided in accordance therewith, therefore, the judgments impugned are not sustainable in the eye of law. Regarding question of limitation, learned counsel for the

petitioners has contended that it stood established from record that the suit was hopelessly time barred, as the suit property was mortgaged eight years prior to settlement of 1886-87, therefore, the instant suit was not redeemable and the respondents/plaintiffs were not entitled to get the decree whereas both the learned Courts below have committed material illegality and irregularity while deciding this particular issue against the defendants-petitioners and in this respect, evidence available on record has not been taken into consideration resulting in miscarriage of justice.

4. Arguments heard and record perused.

5. Considering the arguments and perusing the record made available, it is observed that initially the respondents/plaintiffs had instituted a suit seeking declaration regarding suit property alleging that the suit property was never mortgaged by their predecessor and the entries prevailing in the revenue record are fraudulently made, which suit was dismissed vide judgment dated 14.9.2009 for the reason that period of limitation for seeking redemption is sixty years, whereas the respondents/plaintiffs have challenged a hundred years old document with malafide intention to cover the period of limitation. It is pertinent to mention that a civil suit No. 58/1 of 2000 was filed on behalf of predecessor of the parties Mir Gul shah and Roshan Gul sons of Mughal Seeking redemption of the suit property

but subsequently this suit was dismissed as withdrawn with the permission to file afresh suit on the ground that at the time of mortgage of the suit property their ancestor Mughal was minor, therefore, they intend to challenge the mortgaged mutation on the ground that contract on behalf of a minor was not valid.

6. In evidence, it is unequivocally demonstrated that as per Ex.PW-1/1 & Ex.PW-1/2, the plaintiff Roshan Gul is entered as owner mortgagor of suit Khata No. 711 whereas Khush Lisan son of Jalat Khan etc are entered as mortgagee. The record further tells that Ex.PW-2/1 to Ex.PW-2/26, the suit property mentioned in khasra No. 452 measuring 02 kanal 17 marla is entered in the names of Mughal etc as owners/mortgagors whereas Khushamand son of Azam as mortgagee for Rs. 15/- through verbal deed for an indefinite period.

7. At this juncture it may be expedient to reproduce the provisions of Section 60 of the Transfer of Property Act 1882 which reads below:-

"60. Right of mortgagor to redeem: At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at the proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgaged-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and

(where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right is derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by the act of the parties or by decree of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property. Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor."

The expression of provisions supra affirms the right of redemption in all mortgages and no clog can be put against such statutory right and possession of mortgagee over property remained as mortgagee and would not stand converted into possession as owners thereof. In terms of Section 60 of the Transfer of Property Act 1882 the right of redemption is statutory right. Besides it is also a rule of justice, equity and good conscience. It has been variously held by the Superior Courts that any clog on redemption of the mortgage will

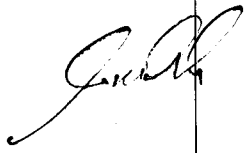
be invalid being violative to the law and equity. Section 60 of the Act ibid unequivocally affirms the right of redemption in all mortgages following the principle 'once a mortgage always a mortgage'. Reliance be made upon *Suleman and 3 others Vs. Custodian, Evacuee Property, West Pakistan, Lahore and 2 others (PLD 1971 Lahore 77)*.

8. As regards the point of limitation and laches suffice to say that once it is held that the disputed transaction is one of the mortgage and not the absolute sale the refusal to get the property redeemed therefore becomes recurring wrong on the part of the mortgagee for which the principle of laches is not attracted at all. Reliance be made upon *Mr. Fazlul Quader Chowdhry and others Vs. Mr. Muhammad Abdul Haque (PLD 1963 Supreme Court 486)*. Besides it is pertinent to mention that when a matter is referable to the law of limitation the question of laches loses significance. In the attending circumstances of this case no period of limitation would run against the respondents/mortgagors. The property can be get redeemed by the respondents/mortgagor at any stage without mischief of the law of limitation barring redemption after the passage of sixty years in terms of Article 158 of the Limitation Act 1908. Reliance be made upon *Abdul Haq Vs. Ali Akbar and 12 others (1998 CLC 129 Peshawar)*.

9. Even otherwise, concurrent findings of facts cannot be upset by this Court in its revisional jurisdiction in a casual manner rather it has to be proved that the same are perverse or arbitrary or the same are based on misreading or non-reading of evidence. It is also settled law that finding on question of fact or law, erroneous the same may be, recorded by the court of competent jurisdiction, cannot be interfered with by the High Court in exercise of its revisional jurisdiction under section 115 Code of Civil Procedure, 1908 unless such findings suffer from controversial defects, illegality or material irregularity as law laid down


10. The above portrayal and discussion lead me to the conclusion that learned Courts below have properly exercised the jurisdiction vested in them and the orders passed are in conformity with the law to which no exception can be taken. This Revision Petition has no force and therefore, the same is hereby dismissed in *limine* with no order as to costs.

Announced
Dt:25.6.2020
Hasnain/*

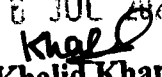

JUDGE

(S.B)

Hon'ble Mr. Justice Sahibzada Asadullah


06/7/2020

SCANNED

06 JUL 2020

Khalid Khan