

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Yahya Afridi

Mr. Justice Syed Hasan Azhar Rizvi

Civil Petitions No.3573 and 3574 of 2020

[Against the judgment dated 14.09.2020, passed by the Peshawar High Court, Abbottabad Bench in Civil Revision No.105-A of 2017 and Writ Petition No.166-A of 2010]

Khan Afsar.

(in both cases)

...Petitioner (s)

Versus

Mst. Qudrat Jan widow and others.

(in CP No.3573)

Abdul Latif and others.

(in CP No.3574)

...Respondent(s)

For the Petitioner(s)
(in both cases)

: Mr. Muhammad Shuaib Abbasi,
ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s)

: N.R.

Date of Hearing

: 10.03.2023

ORDER

Yahya Afridi, J:- Khan Afsar, the petitioner in both cases, has challenged the concurrent findings of all three courts below, which had maintained the findings of all four rungs of adjudicatory hierarchy provided under revenue law.

2. Despite being handicapped with adverse findings on questions of fact, the learned counsel for the petitioner insisted on raising issues already determined by the fora below, and thus was cautioned that such factual issues, in the circumstances of the present case, could not be reagitated and disturbed, and that too by this Court at this stage.

3. The issue relating to the commencement of the period of limitation for a mortgagor to redeem the mortgaged property was

the crucial contested point between the parties. The learned counsel for the petitioner contended that in the present case, the sixty years period of limitation for the respondents to file their suit for redemption of the disputed mortgaged property would commence from the date of creation *vide* mutation no. 9395 dated 21.07.1935, and not from the date of expiry of the term of the mortgage, as was determined by the three courts and the revenue authorities below.

4. Article 148 of the Schedule to The Limitation Act, 1908 ('Act') provides for the period of limitation for a mortgagor to redeem the mortgage, it stipulates in terms that:

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|---|-------------|---|
| Against a mortgagee to redeem or to recover possession of immovable property mortgaged. | Sixty years | When the right to redeem or to recovery possession accrues: |
|---|-------------|---|

Given the above clear provision, we note that the cause of action for a mortgagor to redeem the mortgage and recover the possession of the mortgaged property would commence from the point when the mortgagor can, under the terms of the mortgage, redeem the mortgage property or recover the possession thereof. Thus, the crucial determining factor for commencement of the period of limitation would depend on the terms of the mortgage agreement entered into between the parties. The situations that may arise include the following scenarios, summarized as under:

- I. Where, under the terms of the agreement, a specific date has been fixed for payment of mortgage debt. In such a case, the money can only be payable after the expiry of that period and no right to redeem the mortgaged property can

legally be entertained before the said date.¹ A suit for redemption of the mortgaged property can be instituted by the mortgagor against the mortgagee within sixty years, and the limitation would start running from the date so agreed to redeem the mortgage or recover possession of immovable property mortgaged under Article 148 of the Limitation Act.²

II. **Where, under the terms of the agreement, the mortgage is for a fixed period but without a specific date of expiry of the term.** In such a case, the right of redemption can only arise on the expiration of a specified period and not before. A suit for redemption of the mortgaged property can be instituted by the mortgagor against the mortgagee within sixty years, and the limitation would commence from the expiry of the period so fixed.³

III. **Where, under the terms of the agreement, neither any specific date nor any term is fixed.** In such a case, a suit for redemption of the mortgaged property can be instituted by the mortgagor against the mortgagee within sixty years, and the limitation would run from the date of the agreement of mortgage.⁴

5. In the present case, it is an admitted fact that the mortgage of the disputed property was entered on 21.07.1935, and that the term of the mortgage was agreed and fixed for a term of twenty years. This being the position, the cause of action of the

¹ Nazeef v. Abdul Ghaffar, PLD 1966 SC 267 (Page-273)

² Mohabat Khan v. Hazrat Jan, PLD 1988 SC 102 (Page-108)

³ Sher Muhammad v. Amanat Khan, 1991 MLD 1267 (Page-1270), Habibullah v. Mahmood (1984 CLC 309 [SC (A J & K)])

⁴ Abdul Hanan v. Kapoor Khan (1970 SCMR 633), Karam Elahi v. Member, Board of Revenue, N.-W.F.P. (1996 SCMR 1215), & Muhammad Luqman v. Allah Diwaya (2006 S C M R 718)

respondents/mortgagors to redeem the mortgage of the disputed property would accrue from the date of the expiry of the fixed term period of 20 years, and thereafter the limitation period of sixty years would commence. Thus, the term of twenty years of the mortgage would expire on 21.07.1955, and thereafter, the period of limitation of sixty years would commence, and the respondents/mortgagors could file a suit for redemption of the mortgage property until 21.07.2015. As in the present case, the respondents/mortgagors filed their claim on 21.06.2010, the same was well within the stipulated period of limitation provided under Article 148 of the Schedule to the Act.

6. Accordingly, for the reasons stated herein above, we find no illegality or infirmity in the impugned judgment, so as to warrant interference by this court. These petitions are thus dismissed, and leave is refused.

Judge

Bench-IV
Islamabad
10.03.2023
APPROVED FOR REPORTING
Rabbani*/

Judge