

(1996) 12 SC CK 0169

In the Supreme Court Of India

Case No : Criminal Appeal No. 5664 Of 1985

Gopal Singh and Others

APPELLANT

Vs

Massa Singh through Gurdial Kaur (Smt) and Others

RESPONDENT

Date of Decision : 10-12-1996

Acts Referred:

Citation : (1997) 11 SCC 398 : (1998) SCC(L&S) 172

Hon'ble Judges : M. M. Punchhi, J;K. Venkataswami, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

M.M. Punchhi and; K. Venkataswami, JJ.-The finding recorded by the High Court is that the predecessor-in-interest of the appellants, namely, Swaran Kaur, had virtually sold the suit land in favour of the mortgagee by executing the mortgage deed, Exhibit P-1 and if it is so held, then the question of clog on the equity of redemption as such does not arise. Apart from that finding, the High Court has also ruled that there was no clog on the equity of redemption as the mortgage was obtained by the respondents without taking any advantage of or, of any difficulty or embarrassment to Swaran Kaur when lending money as debt, secured by the mortgage of the property. It was also held that the terms of the mortgage could not be held to be unconscionable in the absence of any averment that the bargain struck was under undue influence or otherwise. The High Court has also held that since the mortgage amount was virtually the market price of the land, the terms of the deed could not be considered to be unconscionable. The clear-cut terms of the mortgage were that the land in dispute was mortgaged for Rs 7000 with the condition that it was redeemable after ninety years and that too in the month of chet when the period of ninety years expires. Even though, the mortgagee had secured right thereunder to plant trees and recover price thereof on redemption, undeniably a statement was recorded during the course of the trial that this stipulation would not be pressed upon by the mortgagee at the appropriate time. Thus, when there is no bar erected

towards redemption of the mortgage, we cannot visibly see any clog emerging so as to stand in the way of the mortgagor to redeem the property under Section 60 of the Transfer of Property Act. There is a clear-cut finding recorded by the High Court that the mortgage was virtually a sale. The bargain being termed by the High Court as a sale is not to say that it was a sale. If it was a sale, then the question of raising any clog did not arise. So, we go to hold that the bargain was a mortgage and even though the mortgage money was equivalent to the market price of the property, still the bargain was a mortgage and to which there is no clog of redemption when the time arises for redemption, as stipulated in the terms of the mortgage. This view of ours goes in line with the view taken by the Court in the earlier pre-emption suit where the pre-emptor was not able to obtain the suit property on pre-emption because of the finding that it was not sold and rather had been mortgaged. The appeal therefore fails and is hereby dismissed with the above modification and clarification. No costs.