
(1994) 01 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 112 of 1983

Jagdish Dutt Samnol and Others

APPELLANT

Vs

Ralla Ram Charanji Lal and Others

RESPONDENT

Date of Decision : 14-01-1994

Acts Referred:

Limitation Act, 1908 — Section 19

Limitation Act, 1963 — Section 18, 18(1)

Citation : (1994) 2 ShimLC 64

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : Chhabil Das, for the Appellant; N.K. Sood, for K.D. Sood, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—The appeal is against the judgment and decree passed on 20th December, 1982 by the Additional District Judge, Solan and Sirmur Districts at Nalagarh dismissing the appeal of the Appellants and thereby confirming the judgment and decree passed on 17th November, 1980 by the Sub-judge, Kandaghat dismissing the suit of the Appellants.

2. On 24th October, 1977, Babu Ram the predecessor of the Appellants filed a suit seeking decree for possession by redemption with respect to the double storeyed shop situate in Upper Bazar, Chail, Tehsil Kandaghat, fully described in the headnote of the plaint. It was alleged that predecessor of Plaintiff and proforma Defendant had mortgaged the suit property with possession on 23 Asuj Sambat 1988 BK corresponding to 6th October, 1931 with Ram Singh son of Shri Angat Ram Rajput for Rs. 2.900. It was a usufructuary mortgage. The mortgagee had through registered deed dated 24th June, 1958 transferred his mortgage rights in favour of Defendant-Respondents. Since the mortgage was subsisting because of the acknowledgement having been made by Ram Singh in the deed of transfer, admitting the jural relationship of mortgagor and mortgagee, the

Plaintiff was entitled to get redeemed the property on payment of mortgage amount of Rs. 2,900 and was entitled to get the possession.

3. Suit was resisted by the Defendant-Respondent No. 1. The primary ground on which it was resisted was that the suit was not within time. Originally the mortgage was created in 1988 BK more than 48 years prior to the institution of the suit. There was no question of acknowledgement since it was an unilateral act on the part of Ram Singh mortgagee in making transfer of his mortgagee rights in favour of the Defendants. Execution of sale deed does not in any way extent the period of limitation.

4. The trial Court dismissed the suit holding that by means of sale deed Ex. PA, mortgagee Ram Singh transferred his mortgagee rights in favour of Defendant No. 1. Mortgagors were neither party to this deed, nor they were present when sale deed was executed. Thus, from these circumstances, it was not possible to infer that Ram Singh mortgagee ever wanted to make acknowledgement admitting the jural relationship of mortgagor and mortgagee. The suit was held to be beyond the period of limitation. Feeling dissatisfied, the Plaintiff carried the matter in appeal. The lower Appellate Court dismissed the appeal holding that by means of document Ex PA, liability was not admitted by Ram Singh. Even if it be held that Ram Singh had admitted the liability, the redemption was now sought from Defendant No. 1, who had not executed the sale-deed and thus were not bound by the admission made by Ram Singh. It is this judgment and decree, which is under challenge in this appeal. The appeal was also admitted on the following questions of law:

1. Whether the transfer deed Ex. PA amounts to an acknowledgement of the mortgage?

2. Whether by transfer deed Ex. PA the mortgagee transferred rights in excess of his mortgagee rights?

5. The principal question now to be decided is one of the limitation as to whether the recitals in deed of transfer Ex. PA amounts to acknowledgement within the meaning of Section 18 of the Limitation Act, 1963 (hereinafter referred to "as the Act") so as to bring the suit of the Plaintiff within the period of limitation. The mortgage was created on 23 Asuj 1988 BK corresponding to 6th October, 1931. Ram Singh was the mortgagee with whom property had been mortgaged with possession. It was on 28th May, 1958 that deed of sale was executed by Ram Singh in favour of M/s. Ralla Ram Charanji Lal, Commission Agents, Kalka transferring his mortgagee rights On the date when document Ex. PA was executed, Indian Limitation Act, 1908 (Act No. 9 of 1908) was in force under which the period of limitation for filing suit by the mortgagor to redeem or recover possession of Immovable property was 60 years, from the date when right to redeem or recover possession accrued. It is not in dispute amongst the parties that mortgage created by Bhuroo Ram, predecessor of the Plaintiff in favour of Ram Singh on 23 Asuj 1988 BK was subsisting when Ram Singh

mortgagee transferred his mortgagee rights through document Ex. PA. Section 19 of the Limitation Act 1908, dealing with the acknowledgements, now corresponds to Section 18 in the Act. Sub-section (1) of Section 18 of the Act provides that where, before the expiration of the prescribed period for a suit or application, in respect of any property or right, an acknowledgement of liability, in respect of such property or right has been made in writing signed by the party, against whom such property or right is claimed, or by any person through whom he derives his title for liability, a fresh period of limitation shall be computed from the time when acknowledgement was so signed. Essential features of acknowledgement came up for consideration in *Khan Bahadur Shapoor Fredoom Mazda Vs. Durga Prosad Chamaria and Others*, wherein it was held that the acknowledgement as prescribed by Section 19 (Limitation Act, 1908) merely renews debt ; it does not create a new right of action. It is a mere acknowledgement of the liability in respect of the right in question ; it need not be accompanied by a promise to pay, either expressly or even by necessary implications. It was further held that:

...The statement on which a plea of acknowledgement is based must relate to a present subsisting liability through the exact nature or the .specific character of the said liability may not be indicated in words. Words used in the acknowledgement must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement..

6. The court further held that in construing words used in the statements, made in writing, on which a plea of acknowledgement rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. How the statements should be interpreted, the court held:

...Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning....

7. This statement of law as regards acknowledgement was further reiterated and approved in *Tilak Ram and Others Vs. Nathu and Others*, In this decision, the question had directly arisen as to whether some previous statements made in the pleadings, sale-deed and deed of some mortgage amounted to acknowledgement within the meaning of Section 19 of the Limitation Act (Act No. 9 of 1908) extending the period of limitation for the purposes of getting

mortgaged property redeemed. Large number of decisions were cited at the Bar laying down two principles. One line of those decisions laid down that an admission by a mortgagee in a pleading or a subsequent transaction that he holds the property as a mortgagee is a sufficient acknowledgement that the maker of the statement thinks and believes that he is liable to be redeemed at the date of the statement. On the basis of this principle, a statement in a sale deed by the mortgagee that he was selling his mortgage rights was also held to be an acknowledgement of a subsisting mortgage and of the subsisting rights, which he was competent to transfer and consequently it was held that he was estopped from setting up a defence inconsistent with his rights as the mortgagee. Other decisions, which were cited at the Bar were laying down the principle that a mere admission of jural relationship in a statement is not sufficient to constitute an acknowledgement. It must be in relation to the liability or the right or the property claimed and that such a statement must be shown to have been made with consciousness and an intention of admitting such a right or liability. Hence, in considering whether certain words amount to an acknowledgement of liability or right it has to be seen whether at the time of writing them the writer had in his mind the question as to his liability or whether he was thinking of and referring to some Ors. matter.

8. Without going into the details of the decisions or deciding the correctness of two views, the Apex Court in Tilak Ram's case (supra), reiterated the view laid down in Shapoor Fredoom Mazda's case (supra). Approving the observations made by Lord Justice Fry L.J. in Green v. Humphreys 1884 26 CD 474 at page 481, it was held that the statement in question must relate to the subsisting liability or the right claimed. Where the statement is relied on as expressing jural relationship it must show that it was made with the intention of admitting such jural relationship subsisting at the time when it was made. The ratio of the decision in Shapoor Fredoom Mazda's case {supra} was followed in an Ors. decision, namely, Lakshmirattan Cotton Mills Co.Ltd. and Behari Lal Ram Charan Vs. The Aluminium Corporation of India Ltd., It was reiterated that the statement on which the plea of acknowledgement is founded does not amount to promise and need not indicate the exact nature or the specific character of the liability. The essential requirement of acknowledgement was stated that it must relate to a present subsisting liability and indicate the existence of jural relationship between the parties, such as, for instance that of a debtor and a creditor and the intention to admit such jural relationship. It was also held that such an intention need not be in express terms, but can be inferred by implication and the surrounding circumstances. The Court also reiterated that a liberal construction to the statement in question should be given.

9. In the light of the aforementioned decisions, the questions deserve to be answered but before doing so it may be noticed that while laying down the principles in Shapoor Fredoom Mazda's case (supra), the Court accepted a statement, in a letter by a mortgagor to the second mortgagee, to save the mortgaged property from being sold away at a cheap price at the instance of the

prior mortgagee by himself purchasing it, as one amounting to an admission of the jural relationship of mortgagor and mortgagee therefore, amounting to an acknowledgement within Section 19 (Act No. 9 of 1908).

10. In document Ex. PA after describing his particulars, mortgagee Ram Singh gave full description of the property, namely, two storeyed shop with accommodation therein and its surroundings. It is stated that this property was in his possession as mortgagee on the basis of a mortgage deed No. 7 dated 23 Asuj 1988 BK for a sum of Rs. 2,900. After this, he has also given particulars of Ors. property which was also mortgaged with him for Rs. 1,900 on behalf of one Mohan Lal. It is stated thereafter that he owed some amount to M/s. Ralla Ram Charanji Lal, Commission Agents of Kalka. He had no Ors. means to clear off his debt except to transfer his mortgagee rights in the two properties, for a consideration of Rs. 4,800 with the said firm and that on 9th May, 1958 mortgagee rights had been transferred by him in favour of M/s. Ralla Ram Charanji Lal, who had also been put in possession of the property as mortgagees. Since a sum of Rs. 4,800, the consideration for transferring mortgagee rights had been adjusted by the transferee in his account, who had also expressed their intention to have a deed of sale, transferring the mortgagee rights, executed through the document which was executed by him. It further recites that for a consideration of Rs. 4,800 mortgagee rights have been transferred with M/s. Ralla Ram Charanji Lal of Kalka, who will hold the same as mortgagee and henceforth the transferees will enjoy, with respect to the property the same rights, which he held therein in the capacity as mortgagee.

11. Since as per the dicta of the Supreme Court in Shapoor Fredoom Mazda's case (supra) in deciding the question as to whether any particular writing amounts to an acknowledgement, it is not very useful to refer to judicial decisions on the point. The effect of the words used in a particular document must unequivocally depend upon the context in which words are used and would always be conditioned by the tenor of the said document. In the facts and circumstances there cannot be any manner of doubt that Ram Singh, while executing deed of transfer, made a statement admitting his status as mortgagee, which statement related to the subsisting liability. He in clear and unequivocally terms admitted that the property was in his possession as mortgagee. There can also be no manner of doubt that this statement was made by him with the intention of admitting the jural relationship of mortgagor and mortgagee. Had there been no such intention, there was no question of repeating time and again, in the document, that what was being transferred by him to the transferees were not the mortgagee's rights but something else. It is stated that henceforth transferees will hold and possess the rights in the same manner in which the same were held by him. In the instant suit what is claimed by the Plaintiff is redemption of the mortgage and consequently the possession of the property, which right subsisted as on the date when transfer was made. Statement made by Ram Singh in the sale-deed thus related to a subsisting liability, namely, right of the mortgagors to get redeemed the property, which is the right claimed by

the Plaintiff in the instant suit. In case the mortgage was not subsisting, there was no question of the statement made by Ram Singh operating as an acknowledgement. He was conscious of the fact that liability was subsisting since he himself had referred to the date of original mortgage. The Courts have observed that generally the Courts lean in favour of a liberal construction of such statements though that would not mean that where no admission was made one should be inferred or where a statement was made clearly without intending to admit the existence of jural relationship such intention would be fastened on the maker of the statement by an involved or far-fetched process of reasoning. Admitting a fact that the property was in his possession as a mortgagee, and describing the mortgagors and also mentioning the instrument through which property was mortgaged with him and thereafter stating that what was being transferred was nothing else but the mortgagee rights with full conscious that on the date when the statement was being made it related to subsisting liability as a mortgagee, there is no escape from the conclusion that such recitals made in the document Ex. PA amounts to an acknowledgement of the mortgage.

12. There is nothing in the transfer deed Ex. PA even to draw an inference that any rights Ors. than the mortgagee rights were transferred by Ram Singh in favour of Defendant-Respondent No. 1.

Resultantly, the question No. 1 deserves to be answered in affirmative and question No. 2 in negative.

13. Resultantly, the appeal is allowed. judgment and decree passed by the Courts below is set aside. Suit of Plaintiff is decreed and decree for possession by way of redemption of the suit property, as described in the head note of the plaint is passed in favour of the Plaintiff-Appellants against Defendant-Respondent No. 1 subject to the Plaintiff-Appellants depositing a sum of Rs. 2,900, the mortgaged money in the trial Court within a period of four months from today.

Costs on parties.