(2008) 02 RAJ CK 0093

In the Rajasthan High Court

Laxman and Others APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 43, 58(d)

Citation : AIR 2008 Raj 109

Hon'ble Judges : Shiv Kumar Sharma, J;Guman Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Suit filed by plaintiffs u/s 43 of the Rajasthan Tenancy Act, 1955 (for short ''the Act'') was dismissed being barred by limitation by the Sub-Divisional Officer, Bundi. On appeal, the Revenue Appellate Authority set aside the findings of Section D. O. and decreed the suit directing defendants to hand over the suit property. On a further appeal, the Board of Revenue held that the suit was barred by limitation. Learned single Judge, however, set aside the finding of Board of Revenue and allowed the writ petition. Hence this appeal.

2. We have heard rival submissions advanced before us.

The facts giving rise to this appeal are that Mohan Lal and his father Chhitar Lal (for short plaintiffs), filed a suit u/s 43 of the Act on July 9, 1965 for redemption of the mortgaged lands bearing Khasra Nos. 495/1, 495/2 and 495/3 measuring thirteen bighas and seven bis was. The property was mortgaged by their forefather Manna Lal for a sum of Rs. 280/- in Samvat 1961 (in the year 1904) with Madho, Khana and Deva (all sons of Basu Mali), who are represented by respondents No. 5 to 10 being the heirs of Madho, Khana and Deva and were placed in possession as mortgagors. It was pleaded that their forefathers Manna Lal again took loans of Rs. 30/ in Samwat 1974, a sum of Rs. 28/- in Samwat 1984 and thus the disputed land came to be mortgaged for a sum of Rs. 338/- Kattar Shahi equivalent to Rs. 270 and 4 annas. The plaintiff had requested for redemption of the mortgage by accepting a sum of Rs. 270 and 4 annas and served a notice to that effect on the defendants. The defendants refused to accept the amount and to deliver possession of the disputed land to the plaintiffs and, therefore, the suit for redemption was filed.

3. Defendants Durga Lal and Daya Lal submitted written statement, claiming their possession over the suit properties in their own title and not as mortgagees. It was also claimed that on the basis of their long standing possession they became khatedar tenants by operation of law and in any case by adverse possession they have acquired title. The Sub-Divisional Officer, Bundi had arrived at a conclusion that the plaintiff had failed to prove the relationship of mortgagor and mortgagee or the fact that the mortgage subsists on the date of institution of the suit. Further the suit as it was filed, was barred by limitation. The Sub-Divisional Officer dismissed the suit. In appeal filed by the plaintiffs, the Revenue Appellate Authority arrived at a conclusion that the property in dispute was mortgaged and there was relationship of mortgagor and mortgagee between the plaintiff and defendants and set aside the judgment of the Sub-Divisional Officer and decreed the suit directing the defendants to hand over possession of the suit property. On a further appeal, preferred by defendants, the Board of Revenue although maintained the findings of the property being mortgaged and the relationship of mortgagor and mortgagee between the plaintiff and defendants, has held that the suit was barred by limitation on the date it was presented on the ground that the mortgage being of the year 1904, the suit should have been JUed within sixty years i.e. by 1964.

4. Being aggrieved by the findings of the Board of Revenue, the plaintiffs had filed the writ petition. Learned Single Judge al-^awed the writ petition.

5. Before proceeding further, a look at, Jfcction 43(2) of the Act, applicable at the relevant time appear necessary. Section 43(2) reads as under:

A usufructuary mortgage of any land made before the commencement of this Act or in pursuance of the provision contained in Sub-section (1) shall, upon the expiry of the period mentioned in the mortgage deed, or twenty years from the date of the execution thereof, whichever period is less, be deemed to have been satisfied in full without any payment whatsoever by the mortgagor and the mortgage debt shall accordingly be deemed to have been extinguished and thereupon the mortgaged land shall be redeemed and possession thereof shall be delivered to the mortgagor free from all encumbrances.

6. According to Section 43(2) of the Act, on completion of twenty years period the usufructuary mortgage shall be deemed to have been redeemed and the mortgage amount to be paid, shall be deemed to have been extinguished on April 5, 1961. The plaintiffs would have been entitled to possession of property from that date and the limitation would be twelve years from April 5, 1961. Usufructuary mortgage as defined u/s 58(d) is the mortgage where the mortgagor delivers possession or expressly or by implication binds himself to

deliver possession of the mortgaged property to deliver possession of the mortgaged property to the mortgagee. The mortgagor authorizes the mortgagee to retain such possession until payment of the mortgage money and to receive rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage money, or partly in lieu of interest or partly in payment of the mortgage money. After the expiry of the mortgage period, the mortgagor has right no payment of the amount to redeem the property.

7. We do not see any illegality in the impugned order of the learned single Judge, The appeal being devoid of merits, stands dismissed without any order as to costs.