
(1970) 04 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1485 of 1964

Mst. Gomi and others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-04-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1970) 04 P&H CK 0038

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : J.V. Gupta, for the Appellant; C.D. Dewal, Additional Advocate-General Haryana, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Tewatia, J.—The facts which have led to the filing of the present appeal are that the land in dispute is alleged to have been mortgaged with possession on or about the 28th of July, 1899, with the predecessor-in-interest of the Plaintiff-Appellants for Rs. 100/-and a mutation of the mortgage was sanctioned on 10th of October, 1900. The mortgagors, who are admittedly Mohammedans, at the time of the partition of the country, migrated to Pakistan and became evacuees. On 26th of September, 1962. the Plaintiffs-Appellants instituted the present suit seeking a declaration to the effect that they have become owners of the land in dispute, the said mortgage having become more than sixty years old. They also sought a permanent injunction restraining the Respondent Union of India from disturbing their possession. The Plaintiff-Appellants also alleged that they had spent Rs. 1,200/-on the reclamation of the said land. The Defendant Union of India challenged the jurisdiction of the civil Court to entertain the suit as well as the validity of the notice u/s 80, CPC Code. It was also pleaded by the Defendant that the rights of the Plaintiff-Appellants in the land in dispute stood extinguished by operation of law. The Defendant did not admit the expenditure of Rs. 1,200/-by the Plaintiff-Appellants on the reclamation of the said land. On the pleadings

of the parties, the trial Court framed the following issues-

1. Whether written statement is properly signed and verified ?
2. Whether civil Court has no jurisdiction to try this suit ?
3. Whether the Plaintiffs had become owners of the property in dispute as alleged ?
4. Whether notice u/s 80, CPC Code, is not valid ?
5. Relief.

The trial Court decided issues No. 1, 2 and 4 against the Defendant, gave a finding on issue No. 3 against the Plaintiffs, and dismissed the suit. Aggrieved by the decision of the trial Court, the Plaintiffs went up in appeal before the Additional District Judge, Karnal, and failure there led them to file the present appeal in this Court.

2. Mr. J. V. Gupta, learned Counsel for the Appellants, has urged that the evacuee property in question does not vest in the Custodian of Evacuee Property as well as in the Union of India, the Respondent in this case, unless the evacuee interest is got separated by the Custodian from the competent officer, as envisaged by the relevant provisions of the Evacuee Interest (Separation) Act, 1951, hereinafter called the Act. He has further urged that the right of a mortgagee in the land is not extinguished automatically by operation of the provisions of Section 9, Sub-section (2) of the Act, unless the competent officer makes an order to that effect. Mr. Gupta, in this connection, has made a reference to the provisions of Sections 6, 7, 8 and 9(2) of the Act, which read as follows-

6(1) For the purpose of determining or separating the evacuee interest in a composite property, any competent officer having jurisdiction over such property may, either on information received in this behalf from the Custodian or on an application from a claimant issue, in such form or manner as may be prescribed,-

(a) a general notice requiring all persons who claim interest in such property, and
,b) also a notice on every person who, in the opinion of the competent officer, may have a claim in such property, to submit claims, if any, in respect of that property.

(2) An application under Sub-section (1) shall be in such form and manner as may be prescribed. 7(1) Any person claiming an interest in a composite property may, within sixty days of the date of the issue of the general notice or service of individual notice u/s 6, whichever is later, submit to the competent officer a statement of his claim in writing and signed and verified in the prescribed manner:

Provided that the competent officer may entertain the claim after the expiry of the said period of sixty days if he is satisfied that the claimant was prevented by

sufficient cause from filing the claim in time.

(2)

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(3)

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8. (1) On receipt of a statement of claim u/s (7), the competent officer shall, subject to the provisions of Sub-sections (2) and (3) hold an inquiry into the claim in accordance with the procedure laid down in Section 17 and pass an order determining the interest of the evacuee and the claimant in the property in question and the order shall contain all or any of the following particulars namely: -

(a) the money value of the property ;

(b) in any case where the evacuee and the claimant are co-sharers or partners, their respective shares in the property and the money value of such shares ;

(c) in any case where the claim is made by a mortgagor, the amount due to the evacuee ;

(d) in any case where the claim is made by a mortgagee, the amount due under the claim In accordance with the provisions of Section 9.

(2) Where the Custodian under the Administration of Evacuee Property Act, 1950 (XXXI of 1950), has determined that the property in question or any interest therein is evacuee property, the decision of the Custodian shall be binding on the competent officer:

Provided that nothing contained in this Sub-section shall debar the competent officer from determining the mortgage debt in respect of such property or any interest therein or from separating the interest of the evacuee from that of the claimant u/s 10.

(3) If there is any dispute as to whether a liability is a mortgage debt or not or whether any claim submitted u/s 7 exists, the competent officer shall decide

such dispute:

* * * * *

9(2) Where a mortgagee has taken possession on any terms whatsoever or any agricultural land and is entitled to receive profits accruing from the land and to appropriate the same, every such mortgage shall be deemed to have taken effect as a complete usufructuary mortgage and shall be deemed to have been extinguished on the expiry of the period mentioned in the mortgage deed or twenty years, whichever is less, from the date of the execution of the mortgage deed and if the aforesaid period has not expired and the mortgage debt has not been extinguished, the competent officer shall determine the mortgage debt due having regard to the proportion which the unexpired portion of that period bears to the total of that period.

Learned Counsel for the Appellants has further placed reliance on a judgment of the Supreme Court reported in *Bkanwar Lal v. Regional Settlement Commissioner, Jaipur Cum Custodian, Evacuee Property*¹, for his submission that so long as proper action under the Act is not taken to separate the interest of the evacuees and those who claim to be mortgagees, the Custodian cannot take any action against those claiming to be mortgagees or their tenants who are said to be in possession of the property in suit.

3. Before dealing with his other contention relating to the appellants having perfected their title, his first contention that the Custodian cannot take possession, without having recourse to the procedure prescribed in the Act, of the property in suit, may be disposed of first. The facts of the present case are entirely different from the facts involved in the abovementioned Supreme Court case. In that case, before the twenty years possession on the land of the mortgagee expired the Act came into force, with the result that at the time of the enforcement of the Act the mortgagee was still left with some right in the land which required to be separated by the competent officer under the provisions of the Act, while in the case in hand admittedly the mortgage had become more than twenty years old on the commencement of the Act. Here, by virtue of the operation of the statutory provisions, his mortgagee rights got extinguished and so there remained nothing for the competent officer to separate. In the circumstances of the present case, therefore, the observations of their Lordships of the Supreme Court have no application and cannot help to resolve the present dispute.

4. As regards his second contention that the Appellants have perfected their title in the land before the institution of the suit, I am afraid there is no force in this contention either. The operation of the Limitation Act qua the property in which an evacuee has an interest is stalled by Section 3 of the Act which reads:-

3 Save as otherwise expressly provided in this Act. the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in

force or in any instrument having effect by virtue of any such law." By the provisions of this section, it is clear that the period of limitation would stop running against the Custodian from the date of the commencement of the Act.

5. Learned Counsel for the Respondent Union of India has referred me to an unreported decision of this Court in Civil Writ 353 of 1961 Gopi Ram and Ors. v. The Custodian of Evacuee Property. Punjab Jullu-ndut and another)² decided on 11th October, 1962, wherein Capoor. J. after discussing and relying upon certain unreported decisions of this Court, observed at page 4 of the said judgment.

Now there is no doubt that this was a mortgage with possession and that the period of 20 years had expired from the date of the ex-cution of the mortgage deed when the Act came into force. No doubt, Section 28 of the Indian Limitation Act provides that a mortgagee will become an absolute owner of the property mortgaged after the expiry of 60 years from the date of the mortgage, but Section 3 of the Evacuee Interest Reparation) Act, 1951, lays down in clear terms that this Act would (Save as otherwise expressly provided in the Act itself) have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law. This means that Sub-section (2) of Section 9 of the Act will prevail over the provisions of Section 28 of the Indian Limitation Act.

The only other submission of the learned Counsel for the Appellants that requires to be noticed here is as to whether the Appellants are entitled to a grant of permanent injunction restraining the Onion of India, the Respondent in this case, to disturb their possession. Once it is held that the Appellants have no right in that land in dispute which in view of Sub-section (3) of Section 8 of the Administration of Evacuee Property Act is in possession of the Custodian, then the Defendant-Respondent would be well within its jurisdiction to divest them of the possession of the land in dispute in accordance with law.

6 For the reasons stated above, this appeal fails and is dismissed with costs.