
(2004) 10 P&H CK 0084

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 21 of 1982

Sangat Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 15-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 8(3)
Limitation Act, 1963 — Section 15(2), 18, 19

Citation : (2005) 2 CivCC 259 : (2005) 139 PLR 862

Hon'ble Judges : Adarsh Kumar Goel, J

Bench : Single Bench

Advocate : C.B. Goel, for the Appellant; S.K. Dahiya, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—The appellant filed a suit for redemption stating that one Parshotam Dass mortgaged the suit land with possession to on Rameshwar Dass who transferred the same to Rehmat and Gunni on 24.7.1947. After 15.8.1947, the mortgagees left for Pakistan and mortgagee rights were vested in the Custodian General of India by operation of law and then transferred to State of Haryana.

2. The State of Haryana contested the suit mainly on the plea of limitation.

3. The trial Court decreed the suit and passed preliminary decree for redemption. It was held that the suit was filed on 24.9.1977 while the original mortgage deed dated 27.3.1947 was only acknowledged by the mortgagee Rameshwar Dass in the sale deed Ex. P4 dated 24.7.1947. Giving benefit of Section 15(2) of the Limitation Act, 1963 (for short "the Act"), it was held that suit was within limitation. Reliance was placed on a judgment of the Apex Court in Khan Bahadur Shapoor Fredoom Mazda Vs. Durga Prosad Chamararia and Others, . In para 9 of its judgment, the trial Court observed as under: -

"Perusal of their sale deed which the original mortgagee sold his mortgage right

in favour of Rehmat etc. would show that in it mortgagee gave full particulars of the mortgage including the payment of Rs. 550A. Therefore, in view of the above authorities, it can safely be held that this sale deed Ex. P.4 amounts to acknowledgement made by the original mortgagee vide which he not only admitted his jural relationship with the original mortgagor but also admitted his status as a mortgagee and also payment of Rs. 550/- to the mortgagor."

4. The lower appellate court reversed the decree of the trial court holding that acknowledgement of mortgage in a sale deed did not amount to acknowledgement for purposes of the Act. It was held that recital in a sale deed could not operate as acknowledgement in view of judgment of the Apex Court in Tilak Ram and Others Vs. Nathu and Others, , which was followed in a judgment of this Court in Gita Ram v. Kanwar Lal Amol Singh and Ors. (1976) 78 P.L.R. 509.

5. Learned counsel for the appellate sought to raise the following substantial questions of law:-

"i) Whether the suit can be dismissed when admittedly the plaintiffs are in possession of the suit land and as to whether the plaintiffs have a statutory right to redeem the suit land?

ii) Whether the rights of mortgagor to redeem the mortgage will continue till confirmation of sale pursuant to a decree and whether the rights to redeem can be extinguished without observing the provisions of Order 34 Rule 8(3) CPC?

iii) Whether the admission of Rameshwar Dass in the sale deed Ex. P.4 while selling his mortgagee rights in favour of Rehmat and Gunni would amount to acknowledgement as envisaged u/s 18 of the Indian Limitation Act and the limitation would start running from the same date i.e. 24.7.1947?"

I have heard learned counsel for the parties and perused the record,

6. The first question is whether the lower appellate court was justified in reversing the finding of the trial Court that recital in sale did not amount to acknowledgement.

7. This question is a substantial question of law for consideration. In Tilak Ram's case (supra), the Apex Court considered various decisions on the question whether admission of mortgage in a subsequent transaction was sufficient a acknowledgement one line of decisions holding that it will amount to acknowledgement and the other holding that mere admission of jural relationship did not constitute acknowledgement. It was held by the Apex Court that in view of earlier decision in Shapoor Freedom's case (supra), rival points need not be considered. Following statement from Shapoor Freedom 's case (supra), was referred to the reiterated"

"If the statement is fairly clear then the intention to admit the 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."

8. In view of the above, it cannot be held that recital in a subsequent transaction cannot amount to acknowledgement. The lower appellate Court erred in so observing. Only requirement is that recital should be clear about the intention to admit the jural relationship. The matter also came up for consideration before the Apex Court in a subsequent decision in Reet Mohinder Singh Sekhon Vs. Mohinder Parkash and Others, . After referring to the decision in Tilak Ram's case, the Apex Court observed as under: -

:.....We are of the opinion that it is not correct to treat the recitals in the documents as a mere narration of the previous mortgage that had been created on the property. The words spell out a clear intention that the moneys due Under the mortgage still remained unpaid and also that the mortgagor had a subsisting right of redemption which he could enforce against the mortgagee. In this view of the matter the contention on behalf of the appellant that the recitals in the document of 1.11.1913 constituted an acknowledgement of liability for redemption within the meaning of Section 19 of the Limitation Act deserves to be accepted." (Para 6).

9. In view of the above, it can clearly be held that recital in a document can be treated as acknowledgement if a clear intention is expressed that the money was due Under the mortgage and mortgagor had a subsisting right of redemption. In the present case, in document Ex. P.4, acknowledgement is clearly spelled out. Suit of the appellants, was thus, within limitation.

10. For the above reasons, this appeal is allowed, decree of the lower appellate court is set aside and that of the trial Court is restored. There will be no order as to costs.