
(1995) 11 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 162 of 1981

Smt. Chanderpati alias Kasturi Mahajan

APPELLANT

Vs

Maman Chand and Others

RESPONDENT

Date of Decision : 01-11-1995

Acts Referred:

Limitation Act, 1963 — Section 18

Citation : (1996) 112 PLR 472(1)

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : M.S. Jain, Adarsh Jain and Arun Jain, for the Appellant; O.P. Goyal and Ojinder Singh, V.K. Jain and M.L. Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—This is unsuccessful plaintiffs regular second appeal.

2. Plaintiff filed a suit for possession by means of redemption. According to the plaintiff, one Raghunath son of Khub Ram, father of the plaintiff, and Sampat, her uncle, were owners in possession of a shop detailed in para No. 1 of the plaint. They mortgaged the shop in favour of one Pehlad on 18.3.1922 for a sum of Rs. 4,000/-. On the death of Sampat, his rights devolved upon Raghunath who created an additional mortgage in favour of Pehlad on 3.7.1922. On the death of Pehlad, his rights were inherited by his daughter Shanti. Subsequently, in a dispute between Shanti and Kasturi sister of Pehlad, the mortgages rights were acquired by Kasturi Devi who gifted her rights to her son Risal Singh vide gift deed dated 18.5.1949. On 17.4.1953 Risal Singh sold the property to defendant No. 1 vide registered sale deed. The plaintiff thus claiming herself to be sole heir of Raghunath mortgagor filed the present suit for redemption of the property.

3. Defendant No. 2 in his written statement alleged that the name of the plaintiff is Kasturi and not Chanderpati. According to the defendant, she is the daughter of Raghunath and so has no locus standi to file the present suit. The suit is

barred by limitation as well. It was further averred that defendant No. 2 has become absolute owner of the property as the suit is not within limitation nor the same is maintainable in the present form.

4. Defendant No. 1 too raised similar pleas. It was stated that Risal Singh is not a necessary party. It was further stated that he has acquired ownership right by adverse possession because the sale in his favour was on 17.4.1953 and ever since then he is in possession of the property as owner thereof.

5. On the pleadings of the parties a number of issues were framed. The parties led evidence and finally the trial Court came to the conclusion that in view of its finding on issue No. 5 i.e. did the defendants and their predecessors-in-interest acknowledge the factum of mortgage etc. as alleged in paragraph No. 9 of the plaint, if so, to what effect, the suit of the plaintiff was dismissed.

6. The appellate Court again examined this material issue in the light of evidence led but found no ground to differ with the findings of the trial Court and so dismissed the appeal.

7. The precise point which has again been canvassed is whether the sale of mortgage right amounts to acknowledgment so as to save limitation u/s 18 of the Limitation Act (for short "the Act"). The facts as have been noticed by the Courts below are that the property in dispute earlier belonged to one Raghunath and Sampat. They jointly created a mortgage in favour of Pehlad by registered mortgage deed dated 18.3.1922 (Exhibit P-7). On the death of Sampat, the property devolved upon Raghunath who thereafter created a second mortgage vide Exhibit P-8 on 3.7.1922. Smt. Chanderpati claiming herself to be daughter of Raghunath filed the present suit for redemption of the shop relying upon three different acknowledgments i.e. (i) gift deed Exhibit P-2 executed by Smt. Kasturi in favour of her son Risal Singh, defendant No. 2 on 18.5.1949, (ii) admission contained in written statement of Risal Singh, Exhibit P-4 dated 15.6.1951 and (iii) admission of Risal Singh in conveyance deed Exhibit D-I dated 17.4.1953 in favour of Maman Chand. Since Maman Chand was a transferee of mortgagee rights only the plaintiff had right to redeem the same. Issue No. 5 is the material issue the findings of which are being challenged in the present appeal. Issue No. 5 reads as under-

"Did the defendants and their predecessors in-interest acknowledge the factum of mortgage etc. as alleged in paragraph No. 9 of the plaint if so, to what effect? OPD"

The two mortgage deeds are dated 18.3.1922 (Exhibit P-7) and 3.7.1922 (Exhibit P-8). To redeem these mortgages a suit could be filed within a period of 30 years in terms of Article 61(a) of the Schedule to the Limitation Act 1963. In the present case, the suit was filed on 28.9.1974. It is precisely for this reason that reliance has been placed by the plaintiff on the documents i.e. gift deed, admission in the written statement. It is the case of the plaintiff that since defendants on their own had admitted the existence of mortgage as per

narration given in gift deed Exhibit P-2 dated 18.5.1949 and the subsequent admission in the written statement in a suit dated 15.6.1951 and admission in the sale deed dated 17.4.1953 clearly bring the suit within the period of limitation. In gift deed Exhibit P-2 dated 18.5.1949, Smt. Kasturi gifted her mortgagee rights in the shop in dispute in favour of her son Risal Singh. As per recital in the gift deed, she has described herself to be possessing mortgagee rights. Similarly, in the written statement filed by Risal Singh in an earlier suit dated 15.6.1951 he has described himself to be a mortgagee. To the similar effect is the narration in the conveyance deed dated 17.4.1953. Learned counsel for the appellant once again briefly referred to the relevant portion of the documents/statements to contend that the mortgagee as well as her successor-in-interest have been admitting the factum of mortgage which clearly comes within the ambit of Section 18 of the Limitation Act thereby enlarging the period of limitation for filing of the present suit.

8. The crux of dispute pertains to gift deed Exhibit P-2. The other two documents, namely, alleged admission in the written statement of Risal Singh Exhibit P-4 as well as admission in the conveyance deed Exhibit D-I do not advance the case of the plaintiff in any manner. Even the above documents merely make mention of existence of a mortgage i.e. to say that at one time the shop in dispute belonged to one Raghunath and Sampat who had mortgaged the same with Pehlad. This can hardly be taken to be an acknowledgment in terms of Section 18 of the Act thereby extending the period of limitation. Vide document exhibit P-2, a gift deed executed by Kasturi, ownership rights of haveli and mortgagee rights of the shop in dispute, were gifted to Risal Singh. In this document, it has been recited that the shop in dispute is mortgaged with possession of which Smt. Kasturi is mortgagee and so transfers her rights to Sh. Risal Singh. It has further been made mention that pursuant to the execution of the mortgage deed the possession of the Haveli as well as shop under mortgage has been delivered to Sh. Risal Singh. It has been argued by learned counsel for the appellant that as per recital in the gift deed Smt. Kasturi has admitted the existence of mortgage. Not only this she intended and has in fact, transferred her mortgagee rights in favour of Risal Singh. Such a recital clearly comes within the ambit of Section 18 of the Act and so the present suit for redemption is within limitation. The counsel further argued that the mortgagee while admitting the factum of mortgage is not expected to give the details of the mortgage amount which in any manner is not the matter in dispute. The admission of factum of mortgage in the gift deed has been made within the period of limitation for redemption of the shop. The Courts below erred in law in not properly construing the real meaning of the judicial pronouncements of the apex Court and so deserves to be reversed.

9. Counsel for the respondents, on the other hand, argued that mere statement expressing jural relationship between the parties does not constitute an acknowledgment. The statement to fall within the acknowledgment must show that it was made with the intention of making such jural relationship in

subsistence at the time it was made. Smt. Kasturi has described herself to be mortgagee of the shop which she has gifted to Risal Singh thereby describing her present status. She has nowhere admitted that the property is redeemable on payment of mortgage money. This being so, the plaintiff cannot derive any benefit of mere describing Smt. Kas turi to be a mortgagee of the shop in dispute. Reliance has been placed upon a number of judgments pronounced reference to which will be made in the sub sequent paragraphs.

10. The matter came up for consideration in case reported as Khan Bahadur Shapoor Fredoom Mazda Vs. Durga Prosad Chamaria and Others, . The Court in the context of Section 16 of the Limitation Act, 1908, now Section 18 of the Limitation Act, 1963, held as under-

"It is thus clear that acknowledgment as prescribed by Section 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgment 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 implication. The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability, may not be indicated in words. Words used in the acknowledgment 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 such 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. In construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally the 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. Broadly stated that is the effect of the relevant provisions contained in Section 19 and there is really no substantial difference between the parties as to the true legal position in the matter."

11. The matter was again considered in case reported as Tilak Ram and Others Vs. Nathu and Others, . Reference was made to a number of judicial pronouncements including the decision referred above and it was held that mere statement expressing jural relationship between the parties does not constitute acknowledgment. The statement to fall within the acknowledgment must show that it was made with the intention of admitting such jural relationship subsisting

at the time when it was made. The Court further held as under :-

"The right of redemption no doubt is of the essence of and inherent in a transaction of mortgage. But 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. It follows that where a statement setting out jural relationship is made clearly without intending to admit its existence an intention to admit cannot be imposed on its maker by an involved or a far-fetched process of reasoning."

On facts, it was held that statement could not be relied as acknowledgment of subsisting jural relationship or of subsisting rights and corresponding liability of being redeemed.

12. Similarly, in case reported as Lakshmirattan Cotton Mills Co.Ltd. and Behari Lal Ram Charan Vs. The Aluminium Corporation of India Ltd., it has been held that the statement on which the plea of acknowledgment is founded need not amount to promise and need not indicate the exact nature of the specific character of the liability. It must, however 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. Such an intention need not be express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances. It has been further held that generally speaking a liberal construction of the statement in question should be given.

13. The other decisions cited by the parties in cases reported as Gurbux Singh and Another Vs. Smt. Chinti and Others, , Gira Ram v. Kanwar Lal Amol Singh and Ors. (1976) 78 P.L.R. 509 and Bal Mukand v. Joint Hindu Family Firm known as Munna Lal Ramji Lal (1970)72 P.L.R. 495 are decision as per peculiar facts of the cases but decided on the basis of the decision of the apex Court in Shapoor Freedom Mazda's case (supra) as well as Tilak Ram's case (supra) and so no useful purpose could be served on dilating upon these judgments.

14. The lower appellate Court placed reliance upon Tilak Ram's case (supra) to decide the fate of the present case wherein it has been held that mere statement expressing jural relationship between the parties does not constitute acknowledgment. Where the statement relied on has expressed jural relationship, it must how that it was made with intention of admitting such jural relationship subsisting at the time it was made. In the present case, except describing jural relationship, there is no indication to the effect that the mortgagor had a right to redeem or motgagee's liability to redeem the same. Such a statement when examined in the Sight of decision in Tilak Ram's case (supra) leaves no manner of doubt that the same does not come within the ambit of acknowledgment as per Section 18 of the Act. Both the court after perusing the recitals in. the document Exhibit P-2 have drawn an inference that

the same does not amount to an acknowledgment within the meaning of Section 18 of the Act and I find no infirmity in the same.

15. The decision in case reported as Bibijan and Others Vs. Murlidhar and Others, as well as Reet Mohinder Singh Sekhon Vs. Mohinder Parkash and Others, are as per peculiar facts of the cases examined by the court and so do not advance the case of the appellant in any manner. The Court on facts in Reet Mohinder Singh Sekhon's case (supra) came to the conclusion that the recital in the sale deed dated 1.11.1913 fulfil the requirement in Tilak Ram's case (supra). This way the court came to the conclusion that such a recital comes within the meaning of Section 19 of the Limitation Act, 1908. In Bibijan's case (supra) the High Court in second appeal held that the mortgagee acknowledged the mortgage and that thereafter, limitation starts running from the date of the acknowledgment by the respondent's predecessors-in-interest which would give fresh cause of action for filing a suit for redemption and possession. This finding of the High Court was held to be perfectly legal. This decision is also as per facts of the case. No reference has been made to the earlier decision of the apex court briefly noticed in the earlier part of the judgment. Thus, this case too does not help in deciding the matter in dispute in any manner.

16. Resultantly, I am of the view that the decision given by the Courts below is as per ratio of the decision of the apex Court in Tilak Ram's case (supra). The appeal is thus devoid of any merit and is consequently dismissed. Parties to bear their own costs.