

provisions of rule 4 of Order 20 have to be applied only to something which is first a "judgment" within the meaning of section 2(9) of the Code of Civil Procedure. I hold that the judgment of Shri T. R. Handa, Judge, Small Cause Court, Amritsar, dated 30th April, 1964, in this case is not in accordance with law and is no judgment at all. I, therefore, accept this revision petition, set aside the judgment of the Court below and direct that the case may be heard and decided afresh by the Judge, Small Cause Court, Amritsar in accordance with law. As the respondents have not appeared to contest this petition and to support the Judgment under revision in spite of personal service on them for an actual date, there will be no order as to costs.

B.R.T.

REVISIONAL CIVIL
Before Mehar Singh, J.
MOHTI SINGH,—Petitioner.

versus

BOGHA SINGH AND OTHERS,—Respondents.
Civil Revision No. 532 of 1965.

Transfer of Property Act (IV of 1882)—S. 91—Subsequent mortgagee—Whether can redeem mortgaged property from the prior mortgagee—Court Fees Act (VII of 1870)—S. 7(v) and (ix)—Suit by subsequent mortgagee against the prior mortgagee for possession of the mortgaged property—Court fee payable—Whether under clause (v) or (ix) of S. 7.

Held, that apart from the mortgagor, a person, who has interest in the property mortgaged or has a charge upon such property or any interest in or upon the right to redeem the same, has also a right to redemption as provided in section 91, clause (a) of the Transfer of Property Act, 1882. A subsequent mortgagee qua the prior mortgagee is a person falling in this category. The reason is that he is an assignee of the equity of redemption, and he, thus, has the right to redeem the prior mortgage. He has, therefore, interest in the right to redeem the property mortgaged with the prior mortgagee. When, therefore, the subsequent mortgagee seeks possession of the property mortgaged, by discharging the mortgage debt, he is then exercising his right of redemption as and assignee of that right from the mortgagor. His suit is not a suit for simple possession of the land but a suit to redeem the mortgage and the court fee payable is under section 7(ix) and not section 7(v) of the Court Fees Act, 1870.

Petition under Section 115 of the Code of Civil Procedure, for revision of the order of Shri Bhagwan Singh, Sub-Judge 3rd Class, Mansa, dated the 15th April, 1965, holding that the suit being one falling under Clause (v) of Section 7 of the Court Fees Act, the plaint is properly valued for the purposes of court fees, and deciding the point in favour of the plaintiffs.

DALIP CHAND GUPTA, ADVOCATE, for the Petitioner.
J. C. VERMA, ADVOCATE, for the Respondent.

Arjan Dass
v.
Jagan Nath
Narula, J.

1965

September,
27th.

JUDGMENT

Mehar Singh, J. MEHAR SINGH, J.—There was a mortgage created by Pritam Singh, mortgagor, on the land in question for an amount of Rs. 5,340 in favour of Mohti Singh, defendant. After that the mortgagor created a second mortgage for an amount of Rs. 8,000 on the same land in favour of the plaintiffs, taking from them cash amount of Rs. 2,660, and leaving with them Rs. 5,340 for payment to the prior mortgagee, Mohti Singh, defendant. This defendant, having refused to accept the money and give possession of the land to the plaintiffs, the latter have sued him for possession of that land on payment of the amount of the mortgage money of the previous mortgage. They have paid court-fee on the plaint under section 7(v) of the Court Fees Act, 1870. Mohti Singh, defendant, objected in the trial Court that the plaintiffs are liable to pay court-fee under section 7(ix) of that Act. The learned trial Judge overruled the objection of Mohti Singh, defendant, following *Sheo Ram Singh v. Barkau Singh* (1). This is a revision application by Mohti Singh, defendant, from the order of the learned trial Judge in this respect.

The only authority to which reference has been made at the hearing, and upon which the learned trial Judge has relied, is *Sheo Ram Singh's case*, but, on facts, that case has no bearing so far as the facts of the present case are concerned. It is true that in that case a part of the mortgaged property was already with prior mortgagees under previous mortgages, but the learned Judges made it clear that "Certain houses and groves are free from the mortgagees' occupation, and in the suit, out of which this matter arises, the plaintiffs seek to obtain possession of those houses and groves in the character of mortgagees." So that, what the plaintiffs in that case were suing for was not to redeem the property, subject of the prior mortgage, but to have possession of the property free from the prior mortgagees' occupation. In other words, that was clearly a suit for possession of mortgaged property on the basis of the title emanating from the mortgage-deeds in favour of the subsequent mortgagees. It was not a suit either to redeem the previous mortgage or to discharge the encumbrances of the previous mortgagees. It was a case of a simple possessory suit by the subsequent mortgagees to

(1) A.I.R. 1931 Oudh, 366.

recover possession of the mortgaged property under a title, which they hold under the mortgage deeds. It was in these circumstances that the learned Judges held that the case came within the scope of section 7(v) and not section 7(ix) of the Act. This case, therefore, is not helpful here.

Mohti Singh
v.
Bogha Singh
and others

—
Mehar Singh, J.

There is no other case cited by the learned counsel on either side, which directly comes near the present case. Section 7(v) of the Act relates to court-fee payable "In suits for the possession of land, houses and gardens—according to the value of the subject-matter;", and section 7(ix) refers to court-fee payable "In suits against a mortgagee for the recovery of the property mortgaged," Section 7(v) refers to a simple suit for possession; whereas, obviously, section 7(ix) refers to recovery of property mortgaged from the mortgagee, which means redemption of such property from the mortgagee. Section 7(ix) does not say, who is to bring the suit against a mortgagee for recovery of the property mortgaged. Obviously, it is the person, who has a right to recover such property from the mortgagee, who can bring the suit. Section 91, clause (a) of the Transfer of Property Act (IV of 1882) provides that besides the mortgagor, any person (other than the mortgagee of the interest sought to be redeemed), who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same, may redeem, or institute a suit for redemption of, the mortgaged property. Thus, apart from the mortgagor, a person, who has interest in the property mortgaged or has a charge upon such property or any interest in or upon the right to redeem the same, has also a right to redemption. A subsequent mortgagee *qua* the prior mortgagee is a person falling in this category. The reason is that he is an assignee of the equity of redemption, and he, thus, has the right to redeem the prior mortgage. He has, therefore, interest in the right to redeem the property mortgaged with the prior mortgagee. When, therefore, the subsequent-mortgagee seeks possession of the property mortgaged, by discharging the mortgage debt, he is then exercising his right of redemption as an assignee of that right from the mortgagor. His is not a suit for simple possession of the land, and it does not come within the scope of section 7(v) of the Act. It is the right that such subsequent mortgagee is exercising, which explains the nature of suit, and from that it is clear that his suit is, in substance, one to redeem the prior mortgage.

Mohti Singh v. Bogha Singh and others

On this conclusion, the court-fee is payable under section 7(ix) and not under section 7(v) of the Act.

Mehar Singh, J. This revision application is accepted, order of the trial Judge reversed, and it is found that the plaintiffs are liable to pay court-fee on the mortgage amount of the prior mortgage under section 7(ix) of the Court Fees Act. They are allowed two months from today to make up the court fee in the trial Court. There is no order in regard to costs in this application.

R.S.

APPELLATE CIVIL.

Before Gurdev Singh, J.

GURBACHAN SINGH.—Appellant.

versus

BHAGWATI AND OTHERS,—Respondents.

Regular Second Appeal No. 624 of 1965.

1965

September,
27th.

Punjab Pre-emption Act (I of 1913)—S. 15—Land acquired jointly by two sisters by gift from their mother—One sister selling her one-half undivided share in the land—Other sister—Whether entitled to pre-empt the sale.

Held, that clause Fourthly of sub-section (1) of section 15 of the Punjab Pre-emption Act, 1913, which vests the right of pre-emption in the co-sharers of the vendor, applies to both male and female co-sharers. Sub-section (2) of section 15 will supersede the provisions of sub-section (1) only in those cases where the female vendor acquired the land by inheritance from her father, brother, son or husband. Where two sisters jointly acquired land from their mother by gift, and one of them sells her undivided one-half share therein, the other sister will be entitled to pre-empt the sale by virtue of clause Fourthly of sub-section (1) of section 15 as sub-section (2) of that section does not apply in such a case.

Regular Second Appeal from the decree of the Court of Shri Mohan Lal Jain, Additional District Judge II, Ambala, camp at Karnal, dated the 27th day of April, 1965, affirming with costs that of Shri Roshan Lal Lamba, Sub-Judge, 1st Class, Panipat, dated the 26th March, 1964, granting the plaintiff a decree for possession by pre-emption of the land in dispute on payment of Rs. 17160.83 paise and that the plaintiff would himself pay the mortgage