

Shri Labhu
Ram
and others
v.
Shri Ram
Parkash

R. P. Khosla, J.

executory consideration. The same could not by itself be a ground for ejection. As and when the partition is effected it will have to be considered whether the person to whom this particular portion is allotted is not occupying another residential or scheduled building * * * in the urban area concerned. The ground of the premises being required for personal use because of the expected said partition of the joint family was, in the circumstances, a wholly premature ground.

For all these reasons this petition cannot succeed. I would accordingly dismiss the same. There will be no order as to costs.

B. R. T,

APPELLATE CIVIL

Before Falshaw and Dua, JJ.

Mst. KISHNI,—Defendant-Appellant

versus

MEHMAN SINGH,—Plaintiff-Respondent.

Regular Second Appeal No. 127 of 1950.

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Restitution of Mortgaged Lands Act (IV of 1938)—Sections 2 and 4—Mortgage to be redeemed—Whether should be subsisting on the date of the coming into force of the Act or on the date of the application for redemption made under the Act—Indian Limitation Act (IX of 1908)—Section 19 and Article 148—Whether amended by Act IV of 1938—Endorsement of receipt of money on the mortgage deeds by the guardian of the mortgagee—Whether amounts to acknowledgment of liability to redemption.

Held, that the mortgage sought to be redeemed must be subsisting mortgage on the date on which the application for redemption under the Restitution of Mortgaged Lands Act 1938, is made and not on the date when the said Act came into force.

Held, that the provisions of Indian Limitation Act could not have been intended to be amended by the general, vague and unprecise language used in the Punjab Restitution of Mortgaged Lands Act. The Courts should, generally speaking, construe an enactment, so far as possible in accordance with the terms of the other statutes, which it does not purport expressly to vary, modify or repeal. Legislature does not usually intend to make any substantial alteration in the existing law beyond which it expressly declares. The provisions of both the statutes, the Indian Limitation Act and the Punjab Restitution of Mortgaged Lands Act, are susceptible of simultaneous obedience and they can co-exist being supplementary to or cumulative upon each other and they can indeed both stand together.

Held, that endorsements at the back of the mortgage deeds which recite that a certain sum of money had been received by the guardian of the mortgagee merely show that a certain sum was being received by the guardian. It says nothing about or being a mortgagee, leave alone the question of any acknowledgment of her liability with respect to redemption of the mortgage in question by the mortgagor within the meaning of section 19 of the Indian Limitation Act.

Khushia and others v. Gurditta and others (1), and *Ram Rakha Mal v. Roda and others* (2), affirmed.

Second Appeal from the decree of the Court of Shri Sultan Singh, Senior Sub-Judge, Ambala, dated the 3rd day of November, 1949, affirming that of Shri Rameshwar Dial Extra Sub-Judge, Ambala, dated the 22nd day of July, 1949, granting the plaintiff a decree for a declaration that he was the owner of the land in suit, that there was no subsisting mortgage on 29th April, 1947 to which the Act applied and that the special Collector's order granting restitution of possession to the defendant was without jurisdiction and, therefore, not binding on him against the defendant and dismissing his suit regarding injunction and further ordering that the defendant would pay the costs of the plaintiff.

K. S. JAIN WITH N. N. GOSWAMI, for Appellant.

G. P. JAIN, for Respondent.

(1) 1949 P.L.R. 364.

(2) 1951 P.L.R. 318.

JUDGMENT

Dua, J.

Dua, J.—While admitting this appeal on the 11th of May, 1950, Harnam Singh, J., noted that; according to the learned counsel for the appellant, Khushia and others v. Gurditta and others, (1), required examination and if so ordered by the Chief Justice, the case may be placed before a Division Bench. It is in these circumstances that this appeal, which should in the ordinary course have been heard by a learned Single Judge, has been placed for disposal before a Division Bench.

The relevant facts are that by mortgage deeds dated the 9th of June, 1879 and the 10th of June, 1880, the land in suit was mortgaged with possession by the predecessors-in-interest of the defendant Mst. Kishni (the present appellant) in favour of one Nanak. Nanak's rights passed to one Baldev and in 1920 the minor sons of Baldev transferred their rights to the plaintiff respondent Mehman Singh. On the 29th of April, 1947, the defendant made an application under section 4 of the Punjab Restitution of Mortgaged Lands Act, 1938, for redemption and the Collector passed an order on the 28th of May, 1948, directing that the mortgage be extinguished and that the mortgagor be put in possession of the mortgaged land. An appeal against this order was dismissed by the Commissioner on the 8th of April, 1949. The present suit had been filed by Mehman Singh mortgagee in December, 1948 for a declaration that the plaintiff was the owner of the land in suit and for an injunction that the plaintiff be prevented from interfering with his possession; the plaintiff's allegations are that the defendant had failed to redeem the mortgages within the period of 60

(1) 1949 P.L.R. 364.

years and that the mortgagor's rights had become extinguished with the result that there was no subsisting mortgage on the date of the application filed by the mortgagor under the Punjab Restitution of Mortgaged Lands Act, 1938 and that the order of the Collector was *ultra vires*, null and void.

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The defendant admitted the mortgages but pleaded that as she had entered into possession of the land in suit before the institution of the present suit, the same was not competent. It was further pleaded that the mortgages were subsisting mortgages to which the Punjab Restitution of Mortgaged Lands Act, applied and that the period of 60 years was extended by acknowledgments made by the mortgagees. The jurisdiction of the trial Court was also challenged. On these pleadings the following issues were framed:—

- (1) Which of the two dates, i.e., the date of the commencement of the Act or the date of application is material ?
- (2) When did the limitation prescribed for redemption expire and when did the plaintiff become owner of the suit property because of the mortgagor's failure to redeem within that time ?
- (3) Was the period of sixty years extended by acknowledgment of the right to redeem by the plaintiff or his predecessors-in-title?
- (4) Is the Civil Court's jurisdiction barred ?
- (5) Was the plaintiff in possession of the land in suit on the date of the suit and

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the defendant was not? If so, is the suit in the declaratory from maintainable?

(6) Relief.

The trial Court after referring to various sections of the Punjab Restitution of Mortgaged Lands Act and after noticing difference of opinion between two Financial Commissioners (the view of Mr. Ram Chandra, F. C., in Sarwan Singh and others v. Daula Singh and others (1), and the contrary view of Sir James Anderson, F. C., in Partap Singh, and another v. Anwar Khan and another (2), came to the conclusion, in agreement with the views of Sir James Anderson, that in order to enable the mortgagor to claim relief, the mortgages should be subsisting on the date of the application under the Punjab Restitution of Mortgaged Lands Act. With regard to issues Nos. 2 and 3, the trial Court observed that the defendant had failed to bring any original writing signed by the mortgagee before the Court, the transfers of 1920 were based on written receipts and the original receipts having not been proved, section 19 of the Indian Limitation Act in the opinion of the trial Court was of no avail to the defendant. Both the issues were thus decided in favour of the plaintiff. Under issue No. 4 it was held that the civil Court had no jurisdiction to try the present suit. Under issue No. 5 the plaintiff was found to have been dispossessed two days after the institution of the suit with the result that the present suit for declaration and injunction was held to be competent. On these findings the plaintiff's suit was decreed.

On appeal, preferred by the defendant, the lower appellate Court affirmed all the findings of

(1) 1946 Lahore Law Times, Revenue Rulings, page 6.

(2) 1945 Lahore Law Times, Revenue Rulings, page 12.

the trial Court. It is worth noting that before the lower appellate court the learned counsel for the appellant actually conceded that on the present material on the record issue No. 3 could not have been decided by the trial Court in his favour and indeed he asked for permission to produce additional evidence under this issue, which, of course, was disallowed. The lower appellate Court, while dealing with this issue, rightly observed that the defendant must prove that the opposite party acknowledged the liability in writing signed by him and that no such writing signed by the plaintiff or his predecessors-in-interest had been produced by the defendant. While dealing with issues Nos. 1 and 2 the lower appellate Court, in addition to the two decisions by the two different Financial Commissioners, had also the advantage of going through the decision by a learned Single Judge of this Court in *Khushia and others v. Gurditta and others*, (1), in which Achhru Ram, J., had held that the material date for determining whether the mortgage in question is subsisting or not is the date of the application under the Punjab Restitution of Mortgaged Lands Act claiming relief under the said Act. The lower appellate Court thus, adopting this view, affirmed the decision of the first Court.

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On second appeal before us the learned counsel for the appellant has repeated his contentions on two points:—

- (1) that the mortgagee had acknowledged his liability within the terms of section 19 of the Indian Limitation Act and, therefore, the period of limitation had been extended; and

(1) 1949 P.L.R. 364.

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- (2) that the material date for deciding whether or not the mortgage subsists is the date of enforcement of the Punjab Restitution of Mortgaged Lands Act and not the date of the application under the said Act.

The learned counsel referred us to the endorsements at the back of Exhibits P. 1 and P. 2, the mortgage deeds, which recite that a certain sum of money had been received by Mst. Basso, the guardian of the minor mortgagees, on the 26th of July, 1920. The learned counsel also referred to Exhibits D. 1 and D. 2 which are reports in mutation proceedings and are dated 28th of August, 1920 in which again a reference is made to the amounts having been received by Mst. Basso. The endorsements at the back of Exhibits P. 1 and P. 2, to which also reference is made in Exhibits D. 1 and D. 2, merely show that a certain amount was being received by Mst. Basso. It says nothing about her being a mortgagee, leave alone the question of any acknowledgment of her liability with respect to redemption of the mortgage in question by the mortgagor. In Exhibits D. 1 and D. 2 also all that can be spelt out is that the vendee had paid certain amounts to Mst. Basso. It is impossible for me to conclude from these documents by themselves or when considered along with the oral evidence, to which the learned counsel has referred, that there was any acknowledgment within the meaning of section 19 of the Indian Limitation Act proved on the present record. In fact, in the lower appellate Court, the learned counsel for the appellant had conceded and, in my opinion, rightly that on the existing record he could not claim a decision in his favour under issue No. 3. The learned

counsel has referred us to one or two decided cases but it is not necessary to discuss them because in my opinion on the facts of the present case it cannot possibly be held that there was any admission or acknowledgment of liability in respect of the mortgages in question by the respondent or his predecessors-in-interest. The cases cited by the learned counsel really turned on their own facts.

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On the second point the learned counsel submits that the language of section 2 of the Punjab Restitution of Mortgaged Lands Act (Punjab Act No. IV of 1938) very clearly and explicitly lays down that this Act shall apply to any subsisting mortgages of land, which were effected prior to 8th June, 1901. It is argued that reading this section with section 4, if at the time of the commencement of this Act a particular mortgage subsisted, then it is always open to the mortgagor to present a petition to the Collector, at any time, praying for restitution of possession of the land mortgaged. The learned counsel urged that the words "at any time" should not be limited to the period before the expiry of limitation for redemption of the mortgage in question. The counsel seeks support for his contention from the opening words of section 2 of the Act which provides for the applicability of the provisions of this Act notwithstanding anything contained in any enactment for the time being in force.

This question has been the subject-matter of decision by two learned Single Judges of this Court. The first case in which this matter was discussed and decided is, as already mentioned, reported in *Khushia and others v. Gurditta and*

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Mehman Singh others (1). Achhru Ram, J., in the reported case observed as follows:—

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“It was contended by the learned counsel for the appellants that the mortgage need only be subsisting on the date on which the Act came into force and not at the time when an application is made to the Collector for the purpose of availing of the provisions of the Act. This contention I find myself unable to accept. In each case when the question is raised whether the application for restitution of the land has been made in respect of land covered by a mortgage which is still subsisting and the right to redeem which mortgage has not become extinguished by reason of the expiry of limitation, the material date will be that on which action is taken for the purpose of getting restitution of the land. It could not be the intention of the Legislature that if the mortgage was less than 60 years old at the time the Act was passed the mortgagor could wait for any length of time that he likes before seeking to avail himself of the provisions of the Act and even though at the time he makes an application for the restitution of the land he is unable to maintain a suit for redemption of the mortgage by reason of the expiry of limitation, he can be granted an order under the Act.”

Again in Ram Rakha Mal v. Roda and others (2), Kapur, J., while allowing the second appeal

(1) 1949 P.L.R. 364.

(2) 1951 P.L.R. 318.

approved of the observations of Achhru Ram, J., quoted above. Kapur, J., further added as follows:—

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“I am unable to agree with the judgment of Mr. Ram Chandra. Under the ordinary law of limitation the period allowed for redemption is 60 years from the date of the mortgage or from the date of the possession. After the expiry of that period the right to redeem is extinguished under section 28 of the Indian Limitation Act. This section provides that at the expiry of the period of limitation provided in the Act the right to property is extinguished. If after the expiry of 60 years there was no right left in the mortgagors to redeem, it does not seem to me reasonable to allow the right to redeem to be enlarged on the somewhat vague language used in a section of the Punjab Act.”

The learned Judge in the above case was also influenced by the fact that the Punjab Act was a Provincial Act, and if a provision of this Act was intended to enlarge the period of limitation provided in the Indian Limitation Act, the Provincial Government would have taken the precaution of getting the sanction of the Governor-General. The counsel for the appellant has also tried to seek some support from the language used in the Redemption of Mortgages (Punjab) Act (Punjab Act, II 1913); his argument being that if the petition under section 4 of Act No. IV of 1938 was intended to be competent only if filed before the period of redemption had expired, then the Legislature should have said so just as was done in section 4 of the Punjab Act, II of 1913.

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After giving my most anxious thought to the arguments advanced, I feel that the considerations which weighed with the two learned Single Judges of this Court in the two reported cases have great substance and nothing has been shown to be wrong with the reasoning adopted and the conclusion reached in those cases. I would be disinclined to hold that the provisions of the Indian Limitation Act could have been intended to be amended by the general, vague and unprecise language used in the Punjab Restitution of Mortgaged Lands Act. The Courts should, generally speaking, construe an enactment, so far as possible in accordance with the terms of the other statutes, which it does not purport expressly to vary, modify or repeal. Legislature does not usually intend to make any substantial alteration in the existing law beyond what it expressly declares. In my view the provisions of both these statutes, the Indian Limitation Act and the Punjab Restitution of Mortgaged Lands Act, are susceptible of simultaneous obedience and they can co-exist being supplementary to or cumulative upon each other and they can indeed both stand together. Now, as stated above, if the provisions of the Indian Limitation Act are not to be deemed to have been amended by the Punjab Act, then in order to avoid repugnancy or inconsistency and to give full effect to the provisions of these enactments, I think the more appropriate and reasonable construction to be placed on sections 2 and 4 of the Punjab Act No. IV of 1938 is the one placed by Achhru Ram, J., and Kapur, J., in the reported decisions mentioned above and I agree with the view expressed in those decisions.

For the reasons given above I would affirm the decision of the Courts below and dismiss this

appeal but in the circumstances of the case, I would make no order as to costs.

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Falshaw, J.—I agree.

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Before Grover, J.

MST. GURDEV KAUR,—Appellant.

versus

SARWAN SINGH,—Respondent;

First Appeal from Order No. 125 of 1957.

Hindu Marriage Act XX of 1955)—Section 9—Decree for restitution of conjugal rights—When to be granted—“Reasonable excuse”—Meaning of—Wife kept in illegal confinement—Whether sufficient to refuse restitution of conjugal rights.

Held, that although sub-section (2) of Section 9 of the Hindu Marriage Act confines pleas in defence only to those grounds which can be taken under sections 10, 12 and 13 of the Act, sub-section (1) itself lays down certain conditions which must be fulfilled before a decree can be granted. It will have to be seen firstly whether the husband or wife, as the case may be, has withdrawn from the society of the other *without reasonable cause*. The second requirement is that the court must be satisfied of the truth of the statements made in such a petition. Thirdly, there should be no legal ground why the relief should not be granted.

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Held, that while granting restitution is has to be seen whether the respondent had a reasonable cause for leaving the petitioner and the Court has discretion to refuse relief if reasonable cause exists even in the absence of matrimonial offence. The test, however, as what constitutes reasonable cause would vary with the circumstances of each case. It will have to be applied in the changed social