

Law of Jullundur District has in a large number of decided cases been held by the Lahore High Court to be a carelessly prepared document: See *Inter alia* *Narain Singh v. Mt. Chand Kaur and another* (1) and *Mt. Santi v. Dharm Singh and others* (2). In *Qamr-ud-Din and others v. Mst. Fateh Bano and others* a Division Bench of the Lahore High Court after reviewing all the previous authorities clarified the position of daughters under Customary Law in relation to non-ancestral properties of their fathers and it was held that in all cases of contest between a daughter and a collateral in the matter of succession to self-acquired property left by the former's father the presumption is in favour of the former and the onus lies very heavily on the collaterals to displace that presumption. This decision was later approved by M. C. Mahajan and Achhru Ram, JJ., in Regular Second Appeal No. 107 of 1946. In my opinion, these decisions represent the correct position of law. This appeal must also, therefore, fail with costs.

Mst. Sham Kaur
v.
Santa alias
Santa Singh
and others
Dua, J.

For the reasons given above, both the cross-appeals (R.S.A. 481 of 1952 and R.S.A. 525 of 1952) are dismissed with costs.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

APPELLATE CIVIL

Before S. S. Dulat and D. K. Mahajan, JJ.

TEJA SINGH AND OTHERS,—Appellants.

versus

NARANJAN SINGH AND ANOTHER,—Respondents.

Regular Second Appeal No. 163 of 1953.

Punjab Restitution of Mortgaged Lands Act (IV of 1938)—Section 4—Mortgage effected before 1901 but additional charges created in 1918 and 1937—Collector—Whether

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(1) A.I.R. 1935 Lah. 607

(2) A.I.R. 1935 Lah. 834

(3) I.L.R. 1945 Lah. 110

can order restitution without payment of the additional charges—Mortgagees—Whether entitled to sue for possession of the land mortgaged.

Held, that where a mortgagee has been in possession by virtue of a mortgage created before 1901, and second mortgage or charge is created after 1901, on the same property with the stipulation that possession will remain with the mortgagee till the second mortgage is redeemed or the charge is paid, the Collector cannot order that the possession be handed over to the mortgagor without payment of the additional charge or mortgage debt. It may be open to the Collector to declare that mortgages entered into before 8th June, 1901, have been extinguished. He can, however, go no further and hold that the property should be handed back to the mortgagor without payment of the additional charge created after 8th June, 1901.

Held, that the mortgagees, who have been deprived of the possession of the land by the order of the Collector, are entitled to sue and recover possession of the land on which they were legally entitled to remain in possession at the time the Collector's order was passed.

Second appeal from the decree of the Court of Shri Gyan Chand Bahl, District Judge, Amritsar, dated the 23rd day of January, 1953, affirming that of Shri Dev Raj Saini, Sub-Judge, IV Class, Amritsar, dated the 29th October, 1951, granting the plaintiffs a decree with costs against the defendants for possession of the land in suit as mortgagees.

Y. P. GANDHI AND V. P. GANDHI, for Appellants.

ROOP CHAND, for Respondents.

JUDGMENT

Mahajan, J.

MAHAJAN, J.—This is a second appeal against the judgment and decree of the learned District Judge, Amritsar, affirming on appeal the decision of the trial Court, decreeing the plaintiff's suit for possession on the ground, that the Collector acting under the Punjab Restitution of Mortgaged Lands Act (4 of 1938) had no jurisdiction to deprive the mortgagees of their possession of the

mortgaged lands in the case of a mortgage effected before 1901 by ignoring the additional charge created on the same after 1901.

Teja Singh
and others
v.

Naranjan Singh
and another

Mahajan, J.

The facts giving rise to this second appeal lie in a narrow campus, Land measuring 65 kanals 5 marlas was mortgaged by the predecessors-in-interest of the defendants with the predecessors-in-interest of the plaintiffs on the 5th of September, 1899, to secure an advance of Rs. 600. On the security of this mortgage additional amounts were raised in the years 1918 and 1937, to the extent of Rs. 984 and Rs. 4,600 respectively. It was stipulated in the registered mortgage deeds executed on the 8th of March, 1918, and the 2nd of September, 1937, that unless the amounts so raised are paid the mortgagors will not be entitled to redeem the land.

On the 16th of May, 1940, an application was made under section 4 of the act to the Collector who allowed the same on the 25th of April, 1944, and ordered redemption without payment of any amount to the mortgagees and he further declared the first mortgage extinguished. He, however, completely ignored the two additional mortgages created in 1918 and 1937. In pursuance of this order, the plaintiffs who are the successors-in-interest of the mortgagees were dispossessed. Accordingly on the 21st of July, 1950, the present suit was filed by the plaintiffs for possession of the land initially mortgaged in 1899 on the ground that the order of the Collector ignoring the additional mortgages is illegal and without jurisdiction and the plaintiffs are entitled to retain possession of the land until the amount of the additional mortgages is paid to them. This suit for possession has been decreed by the trial

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Court relying on a decision, *Gurditta Mal and others v. Mohammad and another* (1). On the basis of this decision, it has been held that the order of the Collector is illegal and without jurisdiction so far as it deprived the plaintiffs of the possession of the land by ignoring the additional mortgages. An appeal against the decision to the learned District Judge also failed. Dissatisfied with the concurrent decisions of the Courts below the defendants have come up in second appeal to this Court.

Mr. Gandhi, learned counsel for the appellant, conceded that the decision in *Gurditta Mal and others v. Mohammad and another* (1) lays down the correct rule of law but he maintained that the decision had no application to the facts of the present case. According to his contention, the plaintiffs were dispossessed from the land and the mortgage of the year 1899 was rightly extinguished. All that is left with the plaintiffs is the right to recover the amounts secured by the additional charges and they can enforce the same, but they are not entitled to recover back the possession.

In our opinion, the argument of Mr. Gandhi is wholly devoid of force. It is laid down in the Full Bench decision at page 280 of the report:

“...where a mortgagee has been in possession by virtue of a mortgage created before 1901, and second mortgage or charge is created after 1901, on the same property with the stipulation that possession will remain with the mortgagee till the second mortgage is redeemed or the charge is paid, the Collector cannot order that the possession be handed over to the mortgagor without payment of the additional charge or mortgage debt.

(1) A.I.R. 1947 Lah, 278 (F.B.)

It may be open to the Collector to declare that mortgages entered into before 8-6-1901 have been extinguished. He can, however, go no further and hold that the property should be handed back to the mortgagor without payment of the additional charge created after 8-6-1901".

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and others
v.

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and another

Mahajan, J.

In this view of the matter, the plaintiffs could not be dispossessed from the lands and as the order of dispossession is illegal and void, it will have to be ignored. In this situation, the mortgagors will be in possession of the land without right or authority of law. Similar view was expressed by Bishan Narain, J., in a decision *Sadhu Singh v. Chanda Singh* (1) and we are in respectful agreement with the same.

Thus the plaintiffs would be entitled to sue and recover possession of the land on which they were legally entitled to remain in possession, at the time, the Collector's order was passed. As the suit is for possession within 12 years of dispossession, it was rightly decreed by the Courts below.

Accordingly, this appeal fails and we dismiss it with costs.

DULAT, J.—I agree.

Dulat, J.

B. R. T.

(1) 59 P.L.R. 72