Ram Chand Wasanda Ram Arora Vs Notam Das Gowardhan Das Arora

Civil Revision No. 112 of 1964

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 28, 1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€" Section 7, 8

Citation: AIR 1965 P&H 112

Hon'ble Judges: Jindra Lal, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

1. This is a revision against an order of the District Judge, Hissar, dated the 22nd November, 1963, whereby an application filed by respondent

Notan Dass mortgagee under S. 7 of Regulation 17 of 1806 was accepted and a notice to redeem the mortgaged land was given to the petitioner.

Notan Dass respondent made an application under the aforesaid Regulation 17 of 1806 alleging that the petitioner here Ram Chand had

mortgaged with possession 12 Bighas 6 Biswas of land for consideration of Rs. 1,200/- on the 25th of November 1958, and although the

mortgaged was with possession the same had not been transferred. It was further alleged that the mortgage amount was payable by 1st June 1960,

failing which the mortgage was to ripen to sale. A notice of this application was served on Ram Chand petitioner on the 11th of September 1963,

consequent upon which Ram Chand raised some objections. The District Judge had framed the following three issues at first and the matter was

then posted for evidence and arguments:

1. Is the notice given to the respondent invalid for not mentioning section 7 of the Regulation 17 of 1806 and for not giving full particulars of the

property therein?

2. Does Regulation 17 of 1806 not apply to agricultural land?

3. Is the mortgage deed void since it was executed during the consolidation proceedings?

Notan Das thereafter filed a further application for amendment and an additional issue was framed to the following terms:

Are proceedings under the Regulation 17 of 1806 ministerial and objections as put forward by the respondent are not entertainable and cannot be

gone into these proceedings?"

After hearing the parties it was held by the learned District Judge that he was not entitled to go into the various matters raised by the petitioner Ram

Chand and consequently, as contemplated by S. 8 of Regulations 17 of 1806, he gave a notice to the petitioner to redeem the land within one year

from the date of notice to him, i.e. 11th of September, 1963 otherwise the mortgage would be finally foreclosed and the conditional sale would

become conclusive.

(2) Aggrieved by this order, the petitioner has come up in revision.

(3) The learned District Judge has held, relying upon Ratan Das v. Mt. Guran AIR 1918 Lah 198 and Ahsan Elahi v. Alla-ud-Din AIR 1938 Lah

809 that the proceedings under the said Regulation are purely ministerial and the purpose is merely to give a warning to a mortgagor of the

impending disappearance of his right to redeem the mortgage, and that unless he redeemed the mortgage within a year the conditional sale would

become conclusive.

(4) Section 8 lays down the procedure to be adopted by a mortgage or conditional vendee, who is desirous to foreclose a mortgage or render

conditional ale absolute. It provides that where a receiver or holder of a deed of mortgage and conditional sale, as described in section 7 of the

said Regulation, is desirous of foreclosing the mortgage and rendering the sale conclusive on the expiration of the stipulated period or before the

sum is repaid, he has to make an application to, in the present case, the District Court. It is further provided that on receiving such a written

application the District Judge shall furnish to the mortgagor as soon as the same time notify to him by a parwana that if the mortgagor does not

redeem the property mortgaged in the manner provided for by S. 7 within one year from the date of the notification the mortgagor will be finally

foreclosed and the conditional sale will become conclusive and absolute.

(5) Section 7 of the Regulation lays down the procedure and conditions which entitle a mortgagor or his representatives to redeem before final

foreclosure after application by mortgagee for foreclosure, made u/s 8 if the mortgagor wishes to redeem the mortgage, then he must take steps

and pay the amount within one year after a notice has been served on him u/s 8. A reading of these two section suggests to me that what is

contemplated by S. 8 is merely this that in case where a mortgage is not redeemed, the Court, on an application made, notifies mortgagor and gives him a warning that unless he acts in accordance with a section 8 of the Act his right to redeem the mortgage will disappear and the conditional

sale would become absolute. This, in fact, is what has been laid in AIR 1918 Lah 198 and AIR 1938 Lah 809.

(6) Learned counsel for the petitioner has endeavoured to distinguish the two authorities mentioned above, as well as Gokal Chand v. Sundar

Singh AIR 1949 EP 282 which has also been relied upon by the learned District Judge. He has further relied on Nand Kishore v. Narain Singh.

AIR 1924 Lah 471; Sochet Singh v Dial Singh 46 Pun Re 1907; Behari Lal v. Balmokand 89 Ind Cas 475: AIR 1926 Lah 112 and Munshi Ram

v. Nauranga 72 Ind Cas 575: AIR 1924 Lah 176 and has contended that when objections are raised by a mortgagor on a services of notice as

contemplated under S. 8 of the Regulation, then the Court has to go into the matter and adjudicate upon it. However it may pointed out that nearly

all the authorities relied upon by the learned counsel for the petitioner arose out of suits filed in a civil Court after a notice under S. 8 had been

served on the mortgagor. The jurisdiction exercised, therefore, in these last mentioned cases, was under the CPC on regular suits being filed after

notice under S. 8 of the Regulation has been served on the mortgagor. In my view, therefore, these authorities do not help the learned counsel for

the petitioner.

(7) Of course, there is a condition precedent to the issue of a notice under S. 8 and that condition is that there must be either a receiver of a holder

of a deed of mortgage and conditional sale before the District Judge can exercise jurisdiction under S. 8.

(8) That there was a deed of mortgage and conditional sale admits of no doubt and what Ram Chand mortgagor, petitioner herein, mainly

contended was the Regulation 17 of 1806 did not apply to agricultural land and the mortgage deed was void since it was executed during

consolidation proceedings. In my view, these are not matters which the learned district Judge could adjudicate upon when exercising jurisdiction

under S. 8 of the Regulation.

(9) In view of what I have mentioned above this petition fails and is dismissed with costs.

(10) Petition dismissed.