

(2001) 08 P&H CK 0203

High Court Of Punjab And Haryana At Chandigarh

Case No: Letter Patent Appeal No. 280 of 1986

The State of Punjab and others

APPELLANT

Vs

Surjit Kaur and others

RESPONDENT

Date of Decision: Aug. 29, 2001

Acts Referred:

- Limitation Act, 1963 - Section 6

Citation: AIR 2002 P&H 68 : (2002) 2 ILR (P&H) 274

Hon'ble Judges: V.K. Bali, J; A.B. Saharya, J

Bench: Division Bench

Advocate: S.C. Sibal, Addl. AG Pb. with Mrs. S.K. Bhatia, DAG Pb, for the Appellant; G.S. Punia, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Bali, J.

Without raising any dispute on facts and consequently on the right of Respondents herein to seek redemption of the mortgage of their land, the State of Punjab, Appellant in this Letter Patent Appeal filed under clause X of the Letter Patent has endeavoured to scuttle the aforesaid claim of redemption of mortgage on the plea of limitation. Is the plea of limitation a bar to the relief claimed, i.e., redemption of mortgage, and has any legal force and if not, is State justified in pursuing such matters on such technicalities are the questions that need determination in this appeal.

2. Brief facts of the case reveal that the predecessor-in-interest of Surjit Kaur, widow, Roop Singh and Jit Kaur, son and daughter of Bishan Singh filed an application on June 29, 1976 before the Assistant Collector, Custodian, Jalandhar for redemption of mortgage of their land measuring 54 kanals 12 marlas. The said land, as per revenue records and, in particular, mutation No. 51, at the relevant time 17 Bighas 17 Biswas, which after consolidation was 54 kanals 12 marlas, was mortgaged by

predecessors-in-interest of Petitioners, Fateh and Jiwa for a sum of Rs. 30.50 paise through an oral transaction on June 12, 1912 in favour of one Wali Mohammad. It is quite apparent from the records of the case and so is finding of learned Single Judge that after partition of the country in 1947, Wali Mohammad left for Pakistan and that is how the interest of mortgagee was shown in favour of the Custodian. The application aforesaid was rejected as time barred by the assistant Collector, Custodian vide order dated August 30, 1976. A revision preferred by Surjit Singh and others against the orders aforesaid met with the same fate as the same was rejected vide orders dated December 30, 1978 on the ground that the application was barred by time. It is against the orders aforesaid that Surjit Kaur and her two minor children filed the writ petition, which has since been allowed vide impugned judgment.

3. The admitted or proved facts of the case manifest that whereas, oral transaction of mortgage between Fateh and Jiwa and Wali Mohammad came into being on June 12, 1912, predecessor of the Petitioners died on October 7, 1966, as would be clear from the death certificate, Annexure P-3. Roop Singh, Petitioner No. 2 was born on July 10, 1963, a fact borne out of birth certificate, Annexure P-3, whereas Jit Kaur Petitioner No. 3 was born on April 4, 1966, so borne out of certificate of birth, Annexure P-5. By virtue of Section 6 of the Limitation Act, 1963, minors could seek redemption of mortgage within three years of their attaining majority, i.e., upto July 10, 1984 and April 4, 1987. The period of limitation for redemption of mortgage as provided in the Indian Limitation Act, 1908 was 60 years. However, by the provisions contained in the Limitation Act, 1963 this period was reduced to 30 years, but, there is a specific provision dealing with a situation where the period of limitation prescribed is shorter than the period prescribed by the Indian Limitation Act, 1908. Section 30 of the Limitation Act, 1963 deals with such a situation. Same reads thus:

30. Provision for suits, etc. for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908.- Notwithstanding anything contained in this act.

(a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908 may be instituted within a period of seven years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier

4. On the dint of provisions contained in Section 30 of the Limitation Act, 1963, suit or an application for redemption of mortgage could be filed by January 1, 1971. Petitioners 2 and 3, who were born earlier to that, were minors at that time and, therefore, by virtue of provisions contained in Section 6 of the Limitation Act, 1963, they could file an application for redemption of mortgage within three years of their attaining majority and, as mentioned above, upto July 10, 1984 and April 4, 1987 respectively. Learned Single Judge, after examining the effect of Sections 6 and 30(a)

of the Limitation Act, 1963, rejected the plea of the State that application for redemption was barred by time.

5. Ms. S.K. Bhatia, learned Deputy Advocate General, appearing for the Appellant-State of Punjab, however, based upon provisions of Section 9 of the Limitation Act, 1963, contends that once time begins to run, no subsequent disability or inability to institute a suit or make an application, could stop it. This argument needs to be noticed only to be rejected. Concededly, at a time when father of Petitioners 2 and 3 died, period of limitation had not expired. As mentioned above, period of limitation would have expired, if father of Petitioners 2 and 3 was alive, on January 1, 1971, even if one is to apply the limitation prescribed under the Limitation Act, 1963, whereby the period of limitation for redemption of mortgage has been reduced from 60 years to 30 years, after the death of Bishan Singh, father of Petitioners 2 and 3, it can not be disputed that the minors had succeeded to his estate but at that time they were minors. Time had not, thus, begun to run insofar as minor-Petitioners are concerned. Time that begun to run against the father can not be applied to the sons at a time when they were not even born. The counsel, however, relies upon Lalchand Dhanalal Vs. Dharamchand and Others, Same, in our view, has no parity with the facts of this case and is clearly distinguishable.

6. Technical plea of limitation in defending a justifiable cause is, thus, found to be hollow and unsustainable. We are of the firm view that a welfare State should not indulge in frivolous litigation and in particular defending a rightful claim on technicalities particularly when even on such technicality it has no case at all. If perhaps, authorities/officers vested with the responsibility of deciding plausibility of their plea, be it by way of claiming relief itself or defending a cause, would be somewhat responsible, the Courts in this country at all levels, would not be over-flowing and, thus, over-burdened, as they are, with the work which has attained alarming proportions.

7. Before we may part with this order, we would like to mention that the learned Single Judge also noted the contention of Learned Counsel for the Petitioners based upon Sections 6(a) and 10 of the Evacuee Interest (Separation) Act, 1951 as also 7(a) of the Administration of Evacuee Property Act, 1950 but expressed no opinion on the same and, in our view, rightly so. Once writ petition was likely to be allowed on the specific point taken by the authorities below and by reversing the same, there was no necessity at all to go into any other point, even though, it appears to us and so it appears to be the view of learned Single Judge from the narration of facts and contentions of Learned Counsel for the Petitioners, as noted by him, that there was *prima facie* merit in that also.

8. Finding no merit in this appeal, we dismiss the same with costs, quantified at Rs. 2000/-.

Sd/- Arun B. Saharya, C.J.