

(2014) 04 P&H CK 0162

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 12145 of 1995

Babu Ram

APPELLANT

Vs

The Financial Commissioner

RESPONDENT

Date of Decision: April 25, 2014

Acts Referred:

- Transfer of Property Act, 1882 - Section 60

Citation: (2014) 175 PLR 339

Hon'ble Judges: Gurmeet Singh Sandhawalia, J

Bench: Single Bench

Advocate: Subhash Ahuja, Advocate for the Appellant; Harinder Singh, Advocate for the Respondent

Final Decision: Allowed

Judgement

G.S. Sandhawalia, J.

Challenge in the present writ petition is to the orders passed by the Collector, Gurdaspur dated 07.06.1991 (Annexure P2) which has been further upheld by the Commissioner on 29.09.1994 (Annexure P3) and by the Financial Commissioner vide order dated 06.04.1995 (Annexure P4). By the said order, the appeal filed by Muni Lal, respondent No. 2 had been allowed by the Collector and it was held that the payment of mortgaged money to one of co-mortgager, without the consent of the other co-mortgagee would not be binding upon the other mortgagees. As notice above, the petitioners were unsuccessful before the Commissioner and the Financial Commissioner and resultantly, the present writ petition has been filed. A perusal of the writ petition would go on to show that land measuring 40 kanals, falling in Village Dhut, Tehsil and District Gurdaspur had been mortgaged in the year 1934. On 06.09.1988, the mortgaged amount was paid to Shakuntala Devi, respondent No. 9, wife of Des Raj, by the petitioners and possession of the land was delivered to them and mutation No. 929 was sanctioned on the said date by the Assistant Collector, 2nd Grade. The Tehsildar, vide order dated 08.03.1990, applied for review

of this mutation on the ground that only the statement of respondent No. 9, Shakuntala Devi had been recorded and the redemption should not have been allowed. The said review application was allowed by the Collector, Gurdaspur and the mutation being contested, was referred to the Court of the Assistant Collector 2nd Grade vide order dated 17.07.1990. The earlier order dated 06.09.1988 was upheld on 12.10.1990 (Annexure P1) by holding that payment had been made to Shakuntala Devi and if her other family members had any grudge against Shakuntala Devi, they could take resort to the Civil Court.

2. Respondent No. 2-Muni Lal filed appeal before the Collector, Gurdaspur, challenging the said order on the ground that one of the mortgagees could not accept the money and the mortgage having been made in 1934, the same had become time-barred. The Collector, Gurdaspur came to the conclusion that the original mortgage deed had not been placed on record of the file and therefore, it could not be established that the mortgage was created in 1934 and that the same had become time barred. The photocopy which was placed on record showed it to be in Urdu language and the alleged receipt had not been proved. However, the Collector accepted the argument that the single mortgagee could not give receipt on behalf of others without their consent for getting complete discharge of the mortgage deed and it would not be binding upon the other mortgagees. Accordingly, the appeal was accepted and the order dated 12.10.1990 was set aside.

3. The petitioners preferred appeal before the Commissioner, Jalandhar Division who also went on to hold that the issuance of the receipt could not imply the consent of other mortgagees without their concurrence and dismissed the appeal. The petitioners were unsuccessful before the Financial Commissioner who also who went on to hold that Shakuntala Devi was not the only mortgagee and she was not authorized to act on their behalf and since the consent was not there, the orders passed by the Collector and the Commissioner were upheld. The reasoning given in the order dated 06.04.1995 reads as under:

"3. I have heard learned counsel for the petitioners and perused the impugned orders of the lower revenue authorities very carefully. The learned counsel was stressing the main argument advanced by the learned counsel for the petitioner that since the possession of the land in the dispute was delivered to the petitioners, therefore, the redemption of the mortgage was unequivocal and complete. He also stressed the fact that the receipt given by Smt. Shakuntala Devi was admissible as evidence and was enough to show that the land was actually handed over. From the record, I find that Smt. Shakuntala Devi was not to show that Smt. Shakuntala Devi was not the only mortgagee and it is also a fact that the respondents/co-mortgagees had not gone there for redemption of the land. Nor did they authorize Smt. Shakuntala Devi to act on their behalf. The learned counsel was repeatedly asked to show anything on the record where their consent was also given. But, he could not produce any such evidence nor could he show anything on

the record regarding this.

4. In view of the above, the orders passed by the learned Collector and learned Commissioner in this case were just and legally sound and hence this revision petition merits no consideration.

Dismissed in limine."

Resultantly, the present writ petition has been filed.

4. After hearing counsel for the parties, this Court is of the opinion that the orders passed by the Collector, Commissioner and the Financial Commissioner are not justified. It is a matter of record that Shakuntala Devi, wife of Des Raj had appeared before the Assistant Collector and accepted a sum of Rs. 400/- on behalf of the mortgagees and the possession had also been delivered to the mortgagers. Once one of the mortgagees had accepted the amount on behalf of the other mortgagees and delivered possession and mutation had also been sanctioned in favour of the petitioners, respondent No. 2 could have no grouse regarding the said action. One of the objections before the authorities below was that there was a limitation period of 30 years and since the mortgage was of the year 1934, therefore, it had become time barred though the same had not been accepted. The Collector had, however, set it a side on the ground that the consent of the other mortgagees was not there but the right of the mortgagees to object to the same and contend that their right continues in the land, is without any basis as it is settled by a Full Bench of this Court in [Ram Kishan and Others Vs. Sheo Ram and Others](#), which has held that a mortgage always remains a mortgage and the right is always redeemable and that in the case of usufructuary mortgage, where no time limit is fixed, the right of redemption would arise on the date when the mortgager pays or tenders to the mortgagee or deposits in Court. The right of the mortgagee to redeem u/s 60 of the Transfer of Property Act, 1882 was thus, held to be absolute and right of redemption to the mortgagor was not lost. Relevant observations read as under:

"42. Therefore, we answer the questions framed to hold that in case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court, the mortgage money or the balance thereof. Thus, it is held that once a mortgage always a mortgage and is always redeemable."

5. Learned counsel for the petitioners was well justified in placing reliance upon the judgment of this Court in [Hukmi and Others Vs. Bharat Singh and Others](#), wherein it was held that the entire property could be redeemed by one of the mortgagees. Similarly, this Court in [Smt. Surjit Kaur and others Vs. Kewal Singh and others](#), held that u/s 60 of the Transfer of Property Act, 1882, only piecemeal redemption was not permitted and mortgage remains one and undivided. The mortgagee could not be permitted redemption of a part of the property mortgaged. In the present case, the

mortgagee-Shakuntala Devi accepted the mortgaged amount and delivered the whole property to the mortgagers and mutation was duly sanctioned in their favour which was objected to successfully by respondent No. 2. The said objection was totally unjustified. In view of the law laid down by the Full Bench of this Court in Ram Kishan (supra) the status of the mortgagee remains that of a mortgagee, the submission of the counsel for the respondents that consent of the other mortgagees had not been taken, is without any basis. Their right was only for the redemption money. The amount having been received by Shakuntala Devi, it was open for them to agitate their right against their co-mortgagee. They, by objecting to the right of Shakuntala Devi alone accepting the mortgaged money amounted to objecting to the title of the mortgagers, which cannot be permitted. Accordingly, this Court is of the opinion that the impugned orders dated 07.06.1991 (Annexure P2), 29.09.1994 (Annexure P3) and 06.04.1995 (Annexure P4) are set aside, being not sustainable and the writ petition stands allowed by upholding the order dated 12.10.1990 (Annexure P1) of the Assistant Collector 1st Grade, Gurdaspur.