

(1949) 11 AHC CK 0024

Allahabad High Court (Lucknow Bench)

Case No: Application No. 168 of 1944

Chattram and Others

APPELLANT

Vs

Tirloki and Others

RESPONDENT

Date of Decision: Nov. 3, 1949

Acts Referred:

- Agriculturists Relief Act - Section 12
- Civil Procedure Code, 1908 (CPC) - Section 115
- Transfer of Property Act, 1882 - Section 89

Hon'ble Judges: Kaul, J

Bench: Single Bench

Advocate: Niamatullah and Naimullah, for the Appellant; Hyder Husain, for Opposite Parties Nos. 1 to 5, for the Respondent

Final Decision: Dismissed

Judgement

Kaul, J.

This is a mortgagees' application u/s 115 of the CPC for revision of an appellate order passed by the District Judge of Faizabad in a proceeding initiated u/s 12 of the Agriculturists' Relief Act.

2. The material facts are as follows:

On the 27th of July, 1901, one Sahai created a mortgage with possession over a grove and a house in village Jalalpur, in favour of Har Bhan Dutt. The mortgage was given for a consideration of Rs. 200/-. The sum advanced carried interest at 37 1/2 per cent per annum. In 1923 the representatives-in-interest of the mortgagor brought a suit for redemption. A preliminary decree for redemption was passed on the 24th of October, 1923, under Order 34 Rule 7 of the Code of Civil Procedure. The mortgage, however, was not redeemed, nor was any final decree for foreclosure passed. The mortgagee continued in possession of the property. The representatives-in-interest of the mortgagor, ignoring the proceedings in the

previous suit, filed an application u/s 12 of the Agriculturists' Relief Act for redemption of the mortgage. The application was contested on a number of grounds the chief being that the applicants had lost their right of redemption as they did not deposit the amount payable under the decree passed in the 1923 suit. This contention was upheld by the trial Court and the application was dismissed. The representatives of the mortgagor preferred an appeal which was disposed of by the learned District Judge of Faizabad. Relying on the case of Raghunath Singh v. Hansraj Kunwar L.R. 61 IndAp 362 the learned Judge allowed the appeal. A decree for redemption was passed accordingly. Dissatisfied with this decision the present application was filed.

3. It was contended by the learned Counsel for the applicants that the case of Raghunath Singh v. Hansraj Kunwar L.R. 61 I.A. 362 has no application and was distinguishable. It was argued that the present suit was barred u/s 11 of the Code of Civil Procedure, and also because of Section 10 as the old suit must be taken to be still pending. Reference in the course of argument was made by the learned Counsel for the Petitioners to Narayan v. Gaya Din 28 O.C. 212; Het Ram v. Shadi Lal L.R. 45 I.A. 130; Matru Mal v. Durga Kunwar L.R. 47 I.A. 71; Lachman Singh v. Madsudan ILR 29(sic) All. 481 and [Ghura Koer Vs. Bishun Ram and Others](#) .

4. Apart from the merits of the contention raised by the applicants' Counsel, I am clear that this is not a case in which the High Court can interfere in revision. It was held so far back as 1884 by their Lordships of the Judicial Committee in Raja Amir Hassan Khan v. Sheo Bakhsh Singh L.R. 11 I.A. 237 that where the Judges of the lower Courts have jurisdiction to decide a question and decide it, no appeal lying from such a decision, the Judicial Commissioner has no power u/s 662 of Act X of 1877 as amended by Section 92 of Act XII, of 1879, to call for the record of the case and pass an order therein, unless the Judges of the lower Court have acted illegally or with material irregularity. This view of the High Court to interfere in revision under the corresponding provision of the Code of 1908, that is Section 115 was confirmed in Bala Krishna Udayar v. Vasudeva Aiyar L.R. 44 I.A. 261 at 267 where it was held that Section 115 applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The Section, it was further observed, is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. The same view was reiterated recently in N. S. Venkatgiri Ayyangar v. The Hindu Religious Endowment Board, Madras 1949 A.W.R. 335. It is clear that the determination of the question whether a second suit for redemption does or does not lie, or if the proceedings in the previous redemption suit were a bar to the maintainability of the fresh application for redemption, were all matters which the Courts below had jurisdiction to determine. Even if the decision of the lower appellate Court on these questions was erroneous, that is not a matter for interference in revision. This is sufficient to dispose of the present application. It may, however, be observed that the question whether, after a preliminary decree for redemption has been passed, but the property has not been redeemed, a

second suit for redemption can lie has been set at rest by the decision of the Judicial Committee in *Raghunath Singh v. Hansraj Kunwar* L.R. 61 IndAp 362. Their Lordships referred to the provisions of Sections 60, 92 and 93 of the Transfer of Property Act and pointed out that Section 60 in terms confers upon a mortgagor the right to redeem at any time after the principal money has become payable, provided that the right conferred by the Section has not been extinguished by acts of the parties or by order of a Court. Both these conditions are fulfilled in the present case. There can, accordingly be no question of the right to redeem being barred by the operation of any provisions of law of procedure.

5. The cases which take a contrary view must be held not to lay down good law. *Het Ram v. Shadi Lal* L.R. 45 I.A. 130 and *Matru Mal v. Durga Kunwar* L.R. 47 I.A. 71 which were cited by Chaudhry Niamatulla for the applicant have no bearing on the question which is for determination in the present case. Those cases were concerned with the effect of a decree made u/s 89 of the Transfer of Property Act on the rights of the mortgagee. They lay down no rule of law with regard to the mortgagor's right to redeem after a preliminary decree for redemption under Order 34 Rule 7 of the CPC is passed and the decretal amount is not deposited as required by the terms of the decree. Reference in connection with the point under discussion may with advantage be made to *N. Adinarayana Chetty v. T.T.K.K. Appan Srirangachariar* AIR 1941 Mad 221 and [Joti Lal Sah and Others Vs. Sheodhayan Prashad Sah and Others](#) .

6. There is no substance in this revision application. It is dismissed with costs.