

Balkrishan and Another Vs Mohsin Bhai and Others

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Jan. 6, 1999

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 100
Madhya Bharat Abolition of Jagirs Act, 1951 â€” Section 19, 2(7), 4(1)
Transfer of Property Act, 1882 â€” Section 58

Citation: AIR 1999 MP 86 : (2000) ILR (MP) 494 : (1999) 1 JLJ 399 : (1999) 2 MPLJ 31

Hon'ble Judges: N.K. Jain, J

Bench: Single Bench

Final Decision: Allowed

Judgement

N.K. Jain, J.

This Second Appeal, u/s 100 of the Code of Civil Procedure, arises out of the judgment and decree dated 1-9-78 of the Court of Additional

District Judge, Neemuch, in Civil First Appeal No. 19-A/75, rendered in affirmance of the judgment and decree dated 8-1-76 passed by the

Court of Civil Judge, Class II, Jawad in Civil Suit No. 1-A/69 decreeing suit for the respondent-plaintiffs for redemption of mortgage.

The dispute relate to agricultural lands bearing Survey Nos. 1817, 1818, 1819, 1820, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830

and 1841; total area 8.163 Hectres, situated at Village Athana, Tehsil Jawad, District Mandsaur. Village Athana was a "Jagir" village of erstwhile

Gwalior State which subsequently stood merged in the State of Madhya Bharat. The lands in suit were held by late Yusuf Ali as tenant of

"Jagirdar". The lands were mortgaged by late Yusuf Ali by way of usufructuary mortgage with Shankarlal, the father of respondents Nos. 1 to 3

and husband of respondent No. 4, under an unregistered mortgage deed dated 25/6/1929 for a loan of Rs. 392/-. The mortgage was for a fixed

term of 9 years and it was agreed that after the expiry of the said period of 9 years, the mortgagor would be entitled to redeem the lands on

payment of loan in lump sum. It is not disputed that since 25-6-1929 the lands are in possession of late Shankarlal and after his death the

appellants.

Late Yusuf Ali served a notice on Shankarlal in 1944 seeking redemption of the suit lands. He thereafter filed a suit for redemption u/s 275 of the

Qanoon Mal Gwalior in Tehsil Court which, however, dismissed the suit on 31-8-45 on the ground that since the mortgage deed is not registered,

the suit is not maintainable u/s 275 of Qanoon Mal Gwalior. Yusuf Ali died in the year 1959 and whereupon names of present respondent -

plaintiffs were mutated in village revenue papers in respect of the suit lands notwithstanding the objection raised by late Shankarlal, The plaintiffs

again on 27-7-60 served a notice on late Shankarlal which was replied to by the latter on 13-8-60 denying former's claim for redemption on the

ground of limitation. Shankarlal also died sometime in the year 1965. The plaintiffs thereafter brought the present suit against the appellant-

defendants the heirs of Shankarlal for redemption and possession of the mortgage property. The suit was resisted on various grounds and it was

averred that the mortgage in question was illegal for want of registration and no suit for redemption of such an illegal mortgage is maintainable. It

was further averred that the defendants have perfected their title to the suit land by adverse possession and that the suit is barred by limitation. The

two Courts below have negatived all the pleas raised by the defendants and decreed the suit, thus giving rise to this second appeal.

This appeal has been admitted on following substantial questions of law :

Whether the suit is not maintainable as the mortgagor was not personally cultivating the suit lands on 4-12-1952 when Jagirs were abolished under

the Madhya Bharat Abolition of Jagirs Act and consequently lost all his rights and interest in the lands from that date?

Whether it is rightly held that a valid mortgage came into existence by possession under an unregistered mortgage for 12 years?

An additional question of law as stated below is also raised by the appellants by their application I.A. No. 2380/97 made under the proviso to

Section 100 of C.P.C. and the same is being disposed of by this judgment.

3. Whether in the facts and circumstances of this case the Court below erred in holding that the plaintiffs' suit was not barred by limitation?

I have heard Shri S. D. Sanghi, learned Sr. Counsel appearing with Shri Iqbal Hussain for the appellants and Shri V. M. Rege, learned counsel for

respondents.

Taking the second question first, as already stated the mortgage in question was unregistered while the Gwalior Registration Act required such a

mortgage to be registered compulsorily. However, as conceded and rightly by Shri Sanghi, learned counsel for the appellants, a valid mortgage

would come into existence if a mortgagee under an unregistered mortgage deed continues to be in possession of the mortgage property for 12

years or more. The law on the point is made luculent by this Court in Bherulal 1961 MPLJ 287 in following terms :

If the mortgagee remains in possession of the mortgaged property for 12 years on the basis of a usufructuary mortgage deed which is not

registered, the mortgagee prescribes to himself for a valid mortgagee's title; he does not acquire full title to the property"".

In the instant case although the mortgage was illegal at its inception for want of registration, a valid mortgage come into existence at the expiry of

12 years period as the mortgagee continued to be in possession of the mortgage properly during all that period.

This brings me to question No. 1 which is most important question on which the decision of this appeal hinges. What is to be seen is whether all

rights and interests of late Yusuf Ali the mortgagor it, the suit land stood extinguished on coming into force of the M.B. Abolition of Jagirs Act,

1951 (w.e.f. 4-12-52) (for short, "M.B. Act of 1951) as admittedly the land was not in his possession or cultivation but of the mortgagee

Shankarlal on the said date of resumption.

Before advertng on the question, it may be noted that this point was not raised in either of the two Courts below and it is for the first time that the

appellants have raised this question before this Court in Second Appeal. However, the point projected is a pure question of law patent on record

based on admitted facts. It is well settled that such a pure question of law can be raised for the first time in Second Appeal.

Reverting back to the question, it would be useful here to read relevant provisions of the M.B. Act of 1951. Clauses (a) and (b) of Section 4(1) of

the Act reads as follows :

Consequences of the resumption of Jagir lands (1) As from the date of resumption notwithstanding anything contained in any contract, grant or

document or in any other law, rule, regulation or order for the time being in force, but save as otherwise provided in this Act--

(a) the right, title and interest of every Jagirdar and of every other person claiming through him (including a zamindar) in his Jagir-lands, including

forests, trees, fisheries, wells, tanks, ponds, water channels, ferries, pathways, village-sites, huts, bazars, mela-grounds and mines and minerals

whether being worked or not, shall resumed to the State free from all encumbrances;

(b) all rights, title and interests created in or over the Jagir-land by the Jagirdar or his predecessor-in-interest shall be against the Government,

ceases and determine.

It will be thus, seen that as from the date of resumption (4-12-52) not only the right, title or interest of every Jagirdar or a person claiming through

him, in his Jagir-lands stood resumed to the State but also all rights, title and interest created in or over the Jagir-land by the Jagirdar, as against the

Government, stood ceased and determined. Rights, title or interest created by Jagirdar would naturally include tenancy rights conferred on a tenant

by a Jagirdar. However, this resumption or determination of rights was subject to other provisions of the Act as is evident from the words ""but

save as otherwise provided in this Act"" occurring in sub-section (1) of Section 4. Section 20 is one such provision which conferred pacca tenancy

rights on tenants and sub-tenants of a Jagirdar under certain situations. Sub-section (1) of Section 20 thus provided :

20. Conferral of Pacca tenancy right on Tenants and Shikmis.-- (1) Subject to other provisions of this Act, every tenant of a Jagirdar, or zamindar

including the ""Shikmi"" shall, as from the date of resumption be deemed to be a Pacca tenant of the land cultivated personally by him.

Similarly Section 19 of the Act provided for conferral of Pacca Tenancy Rights on a Jagirdar in the lands cultivated personally by him.

The expression ""land cultivated personally"" is defined in Clause (viii) of Section 2 as follows :

(viii) ""Land cultivated personally"" means land cultivated on one's own account--

(a) by one's own labour; or

(b) by the labour of any member of one's family; or

(c) by servants on wages payable in cash or kind (but not in a share of the crops) or by hired labour under one's personal supervision or the

personal supervision of any member of one's family;

Provided that in the case of a person who is a widow or a minor or is subject to any physical or mental disability or who is in service as a member

of the armed forces of the Union, land shall be deemed to be cultivated personally even without such personal supervision;

The legislature has power to define the words even artificially. So the definition of a word in the definition section may either be restrictive of its

ordinary meaning or it may be extensive of the same. When a word is defined to ""mean"" such and such, the definition is prima facie restrictive and

extensive; whereas, where the word defined is declared to ""include"" such and such, the definition is prima facie extensive. In P. Kasilingam and

others Vs. P.S.G. College of Technology and others, , the Apex Court while interpreting expression ""means"" and ""includes"" occurring in the

definition of ""College"" in Tamil Nadu Private College (Regulation) Rules, observed (at page 1400 (of AIR)) :

A particular expression is often defined by the Legislature by using the word "means" or the word "includes". Sometimes the words "means and

includes" are used. The use of the word "means" indicates that ""definition is a hard and fast definition and no other meaning can be assigned to the

expression that is put down in definition"". The word "includes; when used, enlarges the meaning of the expression defined so as to comprehend not

only such things as they signify according to their natural import but also those things within the clause declares that they shall include. The words

"means and includes" on the other hand, indicate ""an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be

attached to these words or expressions"".

In the instant case also the aforesaid definition is exhaustive and restrictive in nature inasmuch as it requires the land to be cultivated on one's own

account by one's own or by one's family members, labour or through servant. It does not make any reference either expressly or by implication to

the cultivation by the mortgagee in possession who would obviously cultivate the land in his own rights and on his own behalf.

Shri Rege, learned counsel for the respondents has, however, vehemently contended that in the context of usufructuary mortgage the cultivation by

the mortgagee should be deemed to be cultivation on account of the mortgagor. Reliance has been placed on a Division Bench decision of this

Court in *Ramaniwas Singh and Others Vs. Sheomangal Prasad*, . The contention, in my opinion, is unsustainable and the decision in *Ramaniwas*

Singh and Others Vs. Sheomangal Prasad, with due respect, I am afraid, no more holds ground in view of a later decision by the Supreme Court in

Budha Vs. Amilal, .

In *Ramaniwas Singh and Others Vs. Sheomangal Prasad*, , this Court while allowing Letters Patent Appeal, interpreted the expression ""land

cultivated personally"" , defined in Section 2(1)(f) of the V.P. Abolition of Jagirs and Land Reforms Act, 1952 (for short, ""V. P. Act""), to include

the cultivation by the mortgagee, the Court observed (at page 242 and 243 (of AIR)):

With due respect, we are afraid, the learned Chief Justice wrongly assumed that the expression ""personal cultivation"" in Section 22(1) can bear no

other meaning than the one given in Section 2(f), in all circumstances. He appears to have overlooked the opening words of Section 2 ""unless the

context otherwise requires"". In case of a mortgage with possession, which by virtue of Section 6(1)(g), is substituted by a simple mortgage, the

cultivation by the mortgagee in possession must, in law, be regarded as personal cultivation by the mortgagor.

It may, however, be observed at the outset that although the definitions of the expression ""land cultivated personally"" occurring in V.P. Act and in

the M.B. Act of 1951 are exactly the same, there is however, no provision in the M.B. Act like Section 6(1)(g) of the V.P. Act by virtue of which

a mortgage with possession is substituted by a simple mortgage. Under the M.B. Act there would be no such substitution and so not only the lease

created by the Jagirdar but also the mortgage affected by the lessor would cease and the land resumed to the State free from all encumbrances

w.e.f. the date of resumption (4-12-52). On this count, therefore, the decision in Ramaniwas Singh and Others Vs. Sheomangal Prasad, is

distinguishable.

In Budha Vs. Amilal, , the Apex Court while interpreting the term and expression ""Khudkashi"" and ""land cultivated personally"" as defined under the

Rajasthan Zamindari and Biswedari Abolition Act, 1959, which are para-materia to the provision of the V.P. Act of 1952 (also containing a

provision similar to Section 6(1)(g) of the latter Act), held (at page 668 (of AIR)) :

The emphasis under the Act is on personal cultivation which is to be inferred from the entry in the settlement records at the commencement of the

Rajasthan Tenancy Act or the purpose for which the land was allotted after the commencement of the Act. The expression ""Khudkasht"", as

defined in Section 5(23) of the Rajasthan Tenancy Act, would not include land in possession of and cultivated by a tenant or mortgagee.

In another decision in Vishwanath (dead) by L.R. Vs. Chandra Bhan and others, the Apex Court in the context of the similar provision of U.P.

Zamindari Abolition and Land Reforms Act, held that the proprietary rights in ""Sir"", ""Khudkasth"" land and grove land which were mortgaged were

extinguished, and the bhumidhari right which was altogether a new right could not be considered to be included under the mortgage. In the instant

case also the mortgage stood extinguished and all rights and interests in the land either of the proprietor or of his tenant resumed to the State free

from all encumbrances. Not only the mortgagor appellants but also the mortgagee respondents lost all rights in the land and the possession of the

mortgagee-respondents would be deemed to be that of a trespasser liable to be evicted, but, certainly not at the instance of the mortgagor

appellants.

From the foregoing discussion it, therefore, inevitably follows that the suit by the respondent mortgagor for redemption was not maintainable, firstly,

because as from the date of resumption (4-12-52) the mortgage itself cease to exist; and secondly, because the suit land was not cultivated

personally by the plaintiff mortgagor and no right of pacca tenant, therefore, accrued to him in the land. Mutation of the land in his name by revenue

authorities being contrary to law did not also confer any right in it. The question No. 1 thus deserves to be answered in favour of the appellants and

resultantly this appeal must succeed and the suit of the respondent-plaintiffs must fail.

I need not now consider the question No. 3 as proposed by the appellants.

In the result, the appeal is allowed and the judgment and decree passed by the first appellate Court is also those of the trial Court are set aside and

the suit of the respondents is dismissed. No order is, however, made as to the costs, which under the circumstances of the case, the parties are left

to bear their own as incurred throughout.