

SAMPURAN SINGH AND ORS.

A

v.

NIRANJAN KAUR AND ORS.

FEBRUARY 23, 1999

[A.P. MISRA AND N. SANTOSH HEGDE, JJ.]

B

*Limitation Act, 1963 :*

*Article 61(a)—Oral mortgage—Redemption of—Immovable property mortgaged for Rs. 53 in 1893 before extension of S. 59 of Transfer of Property Act, which required registration of a mortgage, to State of Punjab—Held : Such mortgage is valid and legally enforceable—As there is no restriction in the mortgage deed, right to redeem accrues from the very date of execution of valid mortgage—Therefore, limitation for filing suit expired in 1953—Hence, suit filed in 1980 is time-barred—Transfer of Property Act, 1872, S. 59.*

C

*Section 18—Applicability—Liability—Acknowledgement of—Held : For limitation to revive afresh, the acknowledgement must be during subsistence of period of limitation.*

D

*Redemption of Mortgages (Punjab) Act, 1913.*

*Mortgage—Redemption of—Period of limitation—Applicability of Act—Held : Act has no co-relation with period of limitation in case of redemption of mortgages—Hence, not applicable to redemption of mortgages.*

E

**One R and others originally mortgaged the suit land for Rs. 53 by an oral mortgage in favour of B and others in March 1983 in the State of Punjab Prior to the extension of Section 59 of the Transfer of Property Act, 1872, which required registration of a mortgage. Mutation was sanctioned. The appellants had purchased the suit land in the year 1959 from the original mortgagors by execution of registered sale deeds. Subsequently, on 11.1.1960 the mortgages sold their mortgagee rights by way of registered sale deed to the respondents.**

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**The appellants filed a suit in 1980 for possession by way of redemption of the suit land. The respondents contended that the suit was barred by limitation. According to the appellants till 1960-61 it were the mortgagors who remained in possession of the suit land and were getting**

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- A the same cultivated though their tenants. The appellants further contended that since in the year 1960 the respondents had acknowledged the existence of the original mortgage, a fresh period of limitation for redemption of the mortgage in question had begun to run from 11.1.1960. The Trial Court decreed the suit on the ground that a fresh period of limitation under Section 18 of the Limitation Act, 1963 started from 11.1.1960. The first Appellate Court set aside this judgment. The High Court dismissed the second appeal. Hence this Appeal.

- C On behalf of the appellants it was contended that in an oral mortgage till the Redemption of Mortgages (Punjab) Act, 1913 came into force, there was no period of limitation and the right for redemption accrued only after this Act came into force, and so limitation could not start before the date when this Act came into force and thus as in the present case neither mortgagors offered to pay the mortgage amount nor mortgagees communicated that the mortgage amount had been paid, therefore, right to redeem mortgage had not accrued; and that right to redeem under Article 61(a) of Part V of the Schedule to the Limitation Act, 1963 only accrued when either the mortgagors tendered the amount of mortgage or the mortgagees communicated satisfaction of the mortgage amount through the usufruct from the land.

- E Dismissing the appeal, this Court

- F HELD : 1. The oral mortgage was executed in March 1893 in the State of Punjab, prior to the extension of the provisions of Section 59 of the Transfer of Property Act, 1882, which requires registration of a mortgage. Therefore, the transaction was valid and legally enforceable. Further, the suit land was mortgaged with possession for Rs. 53 i.e. less than Rs. 100. So the mortgage could have been effected either by a registered instrument or by delivery of possession of the land in question. Hence, a valid mortgage came into existence on the very day of its execution. [846-D; 845-H; 846-A]

- G *Sri Chand v. Nathi (P & H)*, CR No. 345 of (1981) decided on 21.1.1983, approved.

*Inder Singh v. Kishno*, (1966) Punj LR 408 (P & H), overruled.

- H *Punshottam Dass v. S.M. Dedouza*, AIR (1950) Ori 213 and C.

*Beepatahumma v. V.S. Kadambolithaya*, [1964] 5 SCR 836, held inapplicable. A

2. The period of limitation starts from the very day of a valid mortgage. The court has only to see, whether a mortgage is valid or not. If it is valid, right to redeem to the mortgagors accrues from that very date, unless any restraint in the mortgage deed is provided specifying restriction under it. When there is no restriction mortgagors have a right to redeem the mortgage from that very date when the mortgage was executed. Right accruing means, right either existing or coming into play thereafter. Where no period in the mortgage is specified, there exists a right to a mortgagor to redeem the mortgage by paying the amount that very day in case he receives the desired money for which he has mortgaged his land or any day thereafter. This right could only be restricted through law or in terms of a valid mortgage deed. There is no such restriction shown or pointed out. Hence, the period of limitation would start from the very date the valid mortgage is said to have been executed and, therefore, the period of limitation of 60 years would start from the very date of oral mortgage, which would be from March 1983. The submission based on the language of Article 61(a) of Part V of the Schedule to the Limitation Act, 1963 is misconceived. [849-H; 851-A-C] B C D

3. The submission regarding applicability of Section 18 of the Limitation Act is without any force. The acknowledgement, if any, has to be prior to the expiration of the prescribed period for filing the suit, in other words, if the limitation has already expired, it would not revive under this Section. It is only during subsistence of a period of limitation, if any, such document is executed, the limitation would be revived afresh from the said date of acknowledgement. In the present case, admittedly, the oral mortgage deed is in March 1893. If the period of limitation for filing the suit for redemption is 60 years then limitation for filing a suit would expire in the year 1953. Thus, by the execution of the document dated 11.1.1960 it cannot be held by virtue of Section 18 that the period of limitation is revived afresh from this date. [847-G-H] E F G

4. The Redemption of Mortgages (Punjab) Act, 1913 has no co-relation with the period of limitation in case of redemption of mortgages. In any case, even from the date of this Act, viz., 1913, the period of limitation expires in 1973, hence the suit still is barred by time. [850-C] H

**A**      **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4544 of 1984.**

From the Judgment and Order dated 4.2.83 of the Punjab & Haryana High Court in R.S.A. No. 2362 of 1982.

**B**      A.B. Rohtagi, Harinder Mohan Singh for the Appellants.

G.K. Bansal for the Respondents.

The Judgment of the Court was delivered by

**C**      **MISRA, J.** The only question raised by the learned counsel for the mortgagor-appellants is and, that is, what is also decided by the courts below is whether his suit for redemption is barred by time? This is a case of oral mortgage executed in the year 1893 for a sum of Rs. 53 and further, a question is raised, whether fresh period of limitation would revive from 11th January, 1960, on which date the original mortgagee sold his mortgage right by a registered deed to the respondents, who acknowledge the existence of the mortgage in question?

**E**      To appreciate the controversy, it is necessary to refer to the following short facts of this case. The suit land comprising of 37 kanals 15 marlas in Khewat No. 260, Khatauni No. 448, Rect. No. 45, Killa No. 14(8-0), 19(8-0), 21(5-15), 22(8-0) situated in village Sambhli, Tehsil and District Karnal (Haryana) was originally mortgaged by Rekha and others for a sum of Rs. 53 in favour of Bakhatwara, Raju and Matu S/o Sahu on 21st March 1893. Mutation was sanctioned. Subsequently, on 11th January, 1960, the mortgagee-Matu s/o Raju and Smt. Dasondha Wd/o Parsa D/o Sahu sold their mortgagee rights vide registered sale deed in the even date to the respondents.

**G**      On the other hand, the appellants had purchased the suit land in the year 1959 from the original mortgagor-Rekha and others vide three separate registered sale deeds. According to the appellants till 1960-61 it were the mortgagors who remained in possession of the suit land were getting the same cultivated through their tenants. The appellants state that since in the year 1960 the original mortgagees had acknowledged the original mortgage, therefore, a fresh period of limitation for redemption of the mortgage in question begun to run from 11th January, 1960 and prayed

**H** for possession by way of redemption on payment of Rs. 53.

On these facts, the appellants filed the present suit in the year 1980 for possession by way of redemption of the suit land as against the respondents. The respondents contested the suit and raised preliminary objections that the present suit is hopelessly time barred and also raised other objections which are not necessary to refer, as both the parties pressed only issue of limitation not only before us but even when the matter was before the courts below. Respondents' case is that they are in possession of the suit property as owners as their predecessors-in-interest mortgages with possession transferred their entire right by means of registered sale deed dated 11th January, 1966 to the respondents, as aforesaid. At that time there was no agreement in subsistence as originally mortgagees became owners. As stated earlier, the original oral mortgage was for a sum of Rs. 53.

The Trial Court decreed the suit for redemption on payment of Rs. 53 and held that the suit is within time and hence they have right to redeem the mortgage. The Trial Court held that the suit is within time by holding that the acknowledgement by the respondents, on behalf of the original mortgagees vide sale deed dated 11th January, 1960, a fresh period of limitation start from the date of this deed. It further placed reliance in the case of *Inder Singh & Ors. v. Mst. Kishno & Ors.*, (1966) Punjab Law Report 408, to hold that the period of limitation would only run after expiry of 12 years from the date of mortgage, in cases of unregistered mortgage. Since the present case is also a case of unregistered mortgage it held that such mortgage and possession would only become valid after a period of 12 years from the date of such mortgage. The present oral mortgage in question was of the year 1893 thus the limitation would only start after 12 years of this date which would be in the year 1905 and adding 60 years from this, the limitation for filing suit would only expire in the year 1965 and since there is acknowledgement by the mortgagees on 11th January, 1960, as aforesaid, a fresh limitation starts from this date hence the suit is within limitation. However, the first Appellate Court set aside this judgment. It held that the aforesaid decision in *Inder Singh* (supra) is of no help to the plaintiffs (mortgagors) as it is not disputed by the parties and rather conceded that earlier, specially during the year in question, oral agreement was permissible in the State of Punjab and was treated to be a valid agreement. This coupled with the fact that the principal money secured under the said agreement was less than Rs. 100, so the mortgage could have been effected either by a registered instrument or by delivery of

A possession of the land in question. In this view of the matter, admittedly, the land in the suit was mortgaged with possession for Rs. 53 in March 1893. Hence, a valid mortgage came into existence on the very day of its execution. In view of this, it held that the period of limitation of redemption of the land in suit started on that very date of the execution and thus period of 60 years is to be counted from March 1893, hence the suit is barred by time. When the matter was taken in second appeal the High Court relied on its Full Bench decision in Civil Revision No. 345 of 1981, titled, *Sri Chand & Ors. v. Nathi*, dated 21st January 1983, in which it over-ruled its earlier decision in *Inder- Singh* (supra) and hence dismissed the appeal of the present appellants.

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Learned senior counsel for the appellants, Mr. A.B. Rohtagi, fairly stated that the aforesaid Full Bench decision is no doubt against the appellants but made submissions for holding contrary to what has been held therein. In the said case of *Sri Chand & Ors.* (supra) one of the core question raised was, whether an oral mortgage was valid in the eyes of law, which is executed on 14th June 1948 in the State of Punjab, prior to the extension of the provisions of Section 59 of the Transfer of Property Act, 1882 which requires registration of a mortgage. It is also not in dispute that the Transfer of Property Act by virtue of Section 1 is only extended in the State of Haryana on the 5th August 1967, to which the Full Bench was concerned and to the State of Punjab after 1st November 1956, to which we are concerned. It held that there was no bar to give effect to an oral mortgage in a case where mortgagor gave possession of the land to a mortgagee. The Full Bench held :

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"Now once that is so on the admitted stand that an oral mortgage was made on June 14, 1948 it seems to inflexibly follow that no legal infirmity attached thereto and the transaction was in essence, legally valid and enforceable. All that, therefore, remains for adjudication is as to what would be the period of limitation for the redemption of such a valid oral mortgage."

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The Full Bench decision rightly over-ruled the decision of *Inder Singh* (supra) as that decision wrongly based its conclusion on an earlier decision in the case of *Purushottam Dass and Anr. v. S.M. Dedouza & Anr.*, AIR 37 (1950) Orissa 213. The facts in that case were that the mortgage was for

H an amount for more than Rs. 100 and was unregistered which was executed

after the Transfer of Property Act was made applicable to the State of Orissa hence the mortgage was invalid. It is for this reason it held that the period of limitation would only start after the expiry of 12 years of such invalid mortgage as such possession would prefect into a valid mortgage after the expiry of this period. Hence Full Bench rightly held that the principle of *Punushottam Dass & Anr.* (supra) was wrongly applied in the *Inder Singh* (supra). The Full Bench finally concluded :

"In the present case, admittedly the oral mortgage had been made on June 14, 1948. At that time the relevant provisions of the Transfer of Property Act had not been made applicable to the area. The said transaction at that time was therefore, valid and legally enforceable one and the fact whether the mortgage was registered or not was wholly irrelevant with regard to the issue of its validity. Consequently, the terminus for the limitation for redemption has to run from the aforesaid date of June 14, 1948..."

We find no error committed in coming to the said decision by the Full Bench. No sustainable submission has been advanced to hold a contrary view.

In his endeavour, learned counsel for the appellants, referred to Section 18 of the Limitation Act to hold that the acknowledgement by the original mortgagees to the respondents, through the said registered document dated 11th January 1960, the period of limitation is revive which would only start from that date of acknowledgement hence the suit filed in the year 1980 would be within limitation. The said submission is without any force. Section 18, sub-section (1), itself starts with the words "Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made...". Thus, the acknowledgement, if any, has to be prior to the expiration of the prescribed period for filing the suit, in other words, if the limitation has already expired, it would not revive under this Section. It is only during subsistence of a period of limitation, if any, such document is executed, the limitation would be revived afresh from the said date of acknowledgement. In the present case, admittedly the oral mortgage deed is in March 1893. If the period of limitation for filing suit for redemption is 60 years then limitation for filing a suit would expire in the year 1953. Thus, by the execution of this document dated 11th

- A January 1960 it cannot be held by virtue of Section 18 that the period of limitation is revived afresh from this date.

B Learned counsel for the appellants has also made reference in the case reported in *C. Beepathumma & Ors. v. V.S. Kadambolithaya & Ors.*, [1964] 5 SCR 836. In view of this decision it was submitted that since mortgagee-respondents continued to enjoy the property with possession under the mortgage they cannot shirk from accepting their obligation under it. This court held :

C "...That doctrine is that a person who accepts a benefit under a deed or will or other instrument must adopt the whole contents of the instrument, must conform to all its provisions and renounce all rights that are inconsistent with it, in other words a person cannot approbate and reprobate the same transaction."

D This has no relevance to the present case. Present case is not a case where mortgagee has received any benefit under any instrument and renouncing to perform any obligation under it. In the present case, there is neither any deed or document of mortgage. Even under oral mortgage the only obligation for a mortgagee was to hand over possession of the property mortgaged at the moment mortgagor pays the mortgage money. It is nobody's case that the mortgagor has paid back the money. This part of the judgment only refers to the doctrine of election. There is no obligation under the oral mortgage which could be said not performed by the mortgagee. We are only concerned here, whether the suit filed by the appellants is within time or not. It is significant that this very decision also makes reference about the limitation in filing such suits. Here a suit was filed for redemption of mortgage deed, Ex. P-2 by the 1st and 2nd respondents. The first respondent purchased Schedule 'A' property and undertook to redeem the mortgage property described in Schedules 'A' and 'B' and hand over possession of Schedule 'B' property to the legal representatives in the family of one Madana. Before this on 14th April 1842 G Madana, who was then Ejaman of the family, usufructuarily mortgaged the 'A', 'B' and 'C' Schedule properties under Ex. P-1. This deed did not contain any provision for repayment of the amount or for the usufructuary mortgage to be worked off. So no period was stated for redemption. Then it was later converted into a mortgage specifying time through Ex. P-2, as H aforesaid, in 1862. The Court held :

"...In 1842 when Ex. P-1 was executed, there was no law prescribing a period of limitation for the redemption of a usufructuary mortgage. Such limit came in 1859 for the first time and a period of 60 years from the date of the mortgage was prescribed. It is this statute which seems to have been the cause for the execution of Exs. P-2 and P-2(a); the mortgagees were perhaps afraid that the mortgage *could be redeemed at any time within 60 years from the date of the mortgage of 1842*. The last date for redemption thus was 1902. By getting the term certain for 40 years, the date for redemption was shifted by them to 1902 and redemption could not take place till that year. the mortgagors also benefited, because they obtained a release of some properties and received Rs. 100 in cash. The period of 60 years was repeated in the Act of 1871; but it contained a rider that if during the period of 60 years, there was an acknowledgement then the period would run from the date of that acknowledgement. Art. 148 of the Limitation Act as it stands today was introduced by the Act of 1877. It makes the 60 years' period run from the time when redemption is due..."

(Emphasis supplied)

The aforesaid passage clearly shows that the mortgage could be redeemed at any time within 60 years from the date of mortgage.

Hence we find that this case, instead of supporting, is against the submissions of learned counsel for the appellants. Lastly, learned counsel for the appellants faintly made reference to the Redemption of Mortgages (Punjab) Act, 1913 to submit that in an oral mortgage, till this Act came into force, there was no period of limitation and the right for redemption accrued only after this Act came into force, hence limitation cannot start before the date when this Act came into force and thus as in the present case neither mortgagors offered to pay the mortgage amount nor mortgagees communicated that the mortgage amount has been paid, hence right to redeem mortgage could not be said to have accrued, so question of running any period of limitation never arose till this 1913 Act came into force. This submission is misconceived without any merit and has no force. We have already recorded that the period of limitation starts the very first date of a valid mortgage. Court has only to see, whether a mortgage is valid or not. If it is valid, right to redeem to the mortgagors accrues from that

- A very date, *unless any restrain in the mortgage deed* is provided specifying restriction under it as in the case of *C. Beepathumma & Ors.* (supra) specific restriction was contained under Ex. P-2. So far, this 1913 Act, the statement of objects and reasons clearly reveal that this Act was only brought in, as under Section 7(5) of the Punjab Alienation of Land Act, as subsequently amended in 1907, the Deputy Commissioner has, in the case of mortgages made under Section 6 of that Act, certain powers to restore mortgagors to possession of their property was provided, therefore, 1913 Act was passed to confer similar powers in respect of other mortgages not covered under Section 6. This also provided for a summary procedure in the matter of redemption mortgages. This has no co-relation with the period of limitation in case of redemption of mortgages. In any case, even from the date of this Act, viz., 1913 the period of limitation expires on 1973 hence the suit still is barred by time.

- D Learned counsel also referred to the language of Section 61(a) of part V of the Schedule to the Limitation Act, which is quoted hereunder :

"61. By a mortgagor -

E	Description of suit	Period of limitation	Time from which period begins to run
F	(a) to redeem or recover possession of immovable property mortgaged;"	Thirty Years	When the right to redeem or to recover possession accrues.

F It is not in dispute at the relevant time period of limitation under this was 60 years and not 30 years.

- G Submission was, as aforesaid, right to redeem only accrue when either mortgagors tender the amount of mortgage or the mortgagees communicate satisfaction of the mortgage amount through the usufruct from the land. This submission is misconceived, as aforesaid, if this interpretation is accepted, then till this happens the period of limitation never start running and it could go on for an infinite period. We have no hesitation to reject this submission. The language recorded above makes it clear that right of redemption accrues from the very first day unless

restricted under the mortgage deed. When there is no restriction A  
mortgagors have a right to redeem the mortgage from that very date when  
the mortgage was executed. Right accruing means, right either existing or  
coming into play thereafter. Where no period in the mortgage is specified,  
there exist a right to a mortgagor to redeem the mortgage by paying the B  
amount that very day in case he receives the desired money for which he  
has mortgaged his land or any day thereafter. This right could only be  
restricted through law or in terms of a valid mortgage deed. There is no  
such restriction shown or pointed out. Hence, in our considered opinion  
the period of limitation would start from the very date the valid mortgage C  
is said to have been executed hence the period of limitation of 60 years  
would start from the very date of oral mortgage that would be from March,  
1893. In view of this, we do not find any error in the decision of the first  
Appellate Court or the High Court holding that the suit of the present  
appellants is time barred.

Hence, for the reasons recorded above, we do not find any merit or D  
force in the submissions made by the learned counsel for the appellants.  
Accordingly, the present appeal is dismissed. Costs on the parties.

V.S.S.

Appeal dismissed.