

CASE NO.:
Appeal (civil) 2451 of 1997

PETITIONER:
KANSHI RAM & ANR.

Vs.

RESPONDENT:
LACHHMAN (DEAD) THROUGH LRS.

DATE OF JUDGMENT: 13/07/2001

BENCH:
D.P.Mohapatro, Brijesh Kumar

JUDGMENT:

D.P.MOHAPATRA, J.

The question that arises for determination in this appeal is whether the High Court is right in dismissing the suit filed by the appellants as barred by limitation. The trial court and the first appellate court had answered the question in favour of the plaintiffs holding that the suit was filed within time. The answer to the question depends on whether the suit is one for redemption of the mortgage or is one for recovery of possession of the property which had been mortgaged by predecessor of the plaintiffs with the father of the defendants. Another question which arises in this connection is whether the Himachal Pradesh Debt Reduction Act, 1976 (Act 31 of 1976) provides a fresh cause of action to the debtor/mortgager to recover the mortgaged property. One Punnu father of the appellants mortgaged with possession the suit property with father of the respondents on 26 Magh 2003 (BK) corresponding to February 19, 1946 for a consideration of Rs.830/-. The appellants who succeeded to the suit land after death of their father made an application on 2.4.1979 to the Collector, Ghumarwin, under section 4 of the H.P. Restitution of Mortgaged Lands Act, 1976. It was dismissed by the Collector on 1.12.1980 as barred by time. The plaintiffs thereafter filed the suit for possession of the land in dispute under sections 4 and 5 of the H.P. Debt Reduction Act, 1976 (for short 'the Act'). The defendants contested the suit, on grounds, inter alia, of limitation. The trial court though answered the issue of limitation in favour of the plaintiffs dismissed the suit on the ground of maintainability in view of the dismissal of their application by the Collector. The first appellate court reversed the finding of non-maintainability of the suit; confirmed the finding of the trial court that the suit was filed within time and decreed the suit. The High Court in second appeal reversed the concurrent findings of the courts below on the question of limitation and dismissed the suit on that score. Hence this appeal.

For determination of the question formulated earlier it

is necessary to note some relevant provisions of the Act. The Act as its name shows was enacted to provide for the reduction of debt in the State of Himachal Pradesh. In section 2 (ix) of the Act the expression "loan" is defined as advance in cash or kind and includes any transaction which in substance amounts to such advance but does not include an advance by the Central or State Government or by a local authority authorised by the State Government to make advances, by a co-operative society or by a bank or by the Life Insurance Corporation of India or a loan taken or used for the purposes of trade.

In section 2(xi) "principal" means the amount originally advanced.

In section 2(xiii) "suit to which this Act applies" means any suit or proceeding relating to a loan.

In section 2 (xiv) "debtor" is defined to mean a person who receives a loan as defined under the Act.

Chapter III in which sections 5 to 9 are included deals with "Suits and Decrees". The sections in the chapter contain non-obstante clauses giving the provisions therein overriding effect over any law for the time being in force or decree or contract or agreement to the contrary.

Section 6 provides that notwithstanding the terms of any contract regarding the date or dates on which a debt shall become due; a suit to which this Act applies for the redemption of a mortgage or for accounts may be instituted by a debtor at any time after the commencement of this Act. (emphasis supplied).

In section 7 which starts with a non-obstante clause provision is made for application of the provisions of the Act for amendment of a decree for reduction of the amount due according to the provisions of the Act.

Section 8 which mandates the Court to determine the principal and take into account all sums paid by or on behalf of the debtor and in the case of a mortgage with possession, the net profits realised by the mortgagee reads as follows:

"8. (1) In a suit to which this Act applies

or in an application made in a suit to which this Act applies or in amending a decree under the provisions of section (7) the Court shall, notwithstanding, anything to the contrary in any law decree or contract or in any agreement purporting to close past transactions, determine the principal and take into account all sums paid by or on behalf of the debtor and in the case of a mortgage with possession, the net profits realised by the mortgagee or which with the exercise of ordinary diligence might have been realised by him and shall determine the amount, if any, due by the debtor in accordance with the provisions of sub-sections (2) and (3).

Provided that for the purpose of determining the principal, the court shall treat as principal any accumulated interest which has been converted into principal at any statement, of account or any contract in the course of transaction made before the first day of January, 1917 but shall treat as interest any accumulated interest which has been

converted as aforesaid at any such statement, settlement or contract made on or after the date.

(2) The amount due by the debtor shall not exceed the amount that could have been due if the rate of interest had been, in the case of a secured loan, 6 per cent per annum simple interest, and in the case of unsecured loan, 12 per cent per annum simple interest.

(3) The total amount due by the debtor as interest and principal shall not in any case exceed -

(a) in respect of a loan advanced before the commencement of this Act, twice the amount of the principal less any amount already received by the creditor in excess of the amount due under sub-section(2);

(b) in respect of a loan advanced after the commencement of this Act, twice the amount of principal less any amount already received by the creditor.

(4) Nothing in this section shall entitle the debtor to a refund of any sum already paid by him."

In Section 9 it is laid down that notwithstanding anything contained in section 34 of the Code of Civil Procedure, 1908 the court shall not order future interest on the aggregate sum adjudged in a decree to which this Act applies or any decree amended under the provisions of this Act, at a rate exceeding three per cent per annum simple interest.

Section 11, one of the provisions in dealing with "Execution of Decrees" reads as follows:

"11. (1) Notwithstanding anything contained in this Act or in any other enactment for the time being in force, a final decree for foreclosure shall not be passed in respect of the agricultural land of a debtor in a suit to which this Act applies. Nor shall such land be sold or otherwise transferred in execution of a decree to which this Act applies.

Provided that the court may execute a decree to which this Act applies by granting to the decree-holder a self liquidating usufructuary mortgage of such land for a period as the Collector may decide under sub-section (4) subject to the provisions of sections 16 and 17.

Provided also that when a mortgage has been granted under the provisions of this section, the same land shall not be mortgaged in execution of any other decree to which this Act applies against the same debtor or his heir or successor if the term of the mortgage together with the term or terms of the previous mortgage or mortgages exceed twenty years.

(2) The form, terms and conditions of a mortgage granted under the first proviso to sub-section (1) and the amount to be paid by the debtor at any time for the redemption of such mortgage shall be such as may be prescribed.

(3) Notwithstanding anything contained in the Code of Civil Procedure or any other law for the time being in force, whenever a civil court order that the land be attached and alienated temporarily in the execution of a decree for the payment of money, the proceedings of such attachment and alienation shall be transferred to the Collector.
(emphasis supplied)

According to section 22 in Chapter V titled 'miscellaneous' a debtor may sue for an account of loan and in such suit the Court shall allow only such interest as may be permissible under the Act. It shall after taking necessary accounts declare the account which is still payable by the plaintiff to the defendant and shall on the application of the defendant, if the money is payable, pass a decree in favour of the defendant.

The object of the Act and the scheme underlying it as obtained from the provisions made therein is to grant relief to debtors and enable them to get back properties mortgaged by them with possession for a loan. The use of expression "at any time" for making an application or filing a suit is indicative of the legislative intent that the Act provides a fresh opportunity to the debtor for getting relief under the Act. The legislature has taken care to make the relevant provisions of the Act granting relief to debtors by giving overriding effect over any law, agreement, contract or decree contrary to the provisions of the Act. It was not disputed before us during hearing of the case that the plaintiffs filed the suit under provisions of the Act for restoration of the possession of the mortgaged property. Undisputedly there is no decree for foreclosure in favour of the creditor/mortgagee.

In the backdrop of the above the question of limitation is to be considered. The reason given by the High Court in support of the finding that the suit was barred by limitation is that more than 30 years had elapsed since the date of the mortgage (February, 1946) when the suit was filed in 1981. Therefore the mortgagor had lost his right to redeem the property mortgaged. The provisions in section 27 of the Limitation Act have been considered in support of the finding. This reasoning appears to us to be fallacious. It defeats the object and the purpose of the statute enacted

by the legislature specially to give relief to debtors in the State. The first appellate Court had given cogent reasons in support of its finding in favour of the appellants. The Court held and in our view, rightly that the suit was one for recovery of possession from the mortgagee who was in unauthorised possession of the mortgaged property after the mortgage loan was satisfied. The cause of action for filing such a suit under the Act arose when the enactment was enforced in 1979. Viewed from that angle the suit was filed in time and the trial court and the first appellate Court rightly recorded the findings to that effect. The High Court erred in reversing the concurrent finding of the courts below on the erroneous assumption that the suit was one for redemption of the mortgage simpliciter. It is relevant to note here that the present suit is not one filed under section 60 or 62 of the Transfer of Property Act. It is a suit filed for relief on the basis of the Himachal Pradesh Debt Reduction Act, 1976.

On the discussions made in the foregoing paragraphs and for the reasons stated therein the appeal is allowed with costs, the judgment of the High Court is set aside and the

judgment of the lower appellate court is confirmed. Hearing fee is assessed at Rs.10,000/-.