

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2012 OF 2009
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 5028 OF 2007)

Satya Narain and Others

.....Appellant(s)

- Versus -

Om Prakash and Others

....Respondent(s)

J U D G M E N T

GANGULY, J.

1. Leave granted.

1. The subject matter of challenge in this case is the judgment and order dated 3rd January 2007 of Rajasthan High Court in Civil Second Appeal No.63/1990, whereby the High Court has dismissed the appeal.

1. The material facts of the case are that on 4.3.1953 one Smt. Lado w/o Late Shri Meghraj mortgaged

two houses to the father of the present appellants for a sum of Rs.4000/- . After the death of Smt. Lado, her adopted son Malchand on 2.12.1958 filed a suit, being Suit No.156/58 before the Civil Judge Nagaur, Rajasthan inter alia claiming therein that the mortgaged deed was executed by one Chhoga Lal and Bajrang Lal by playing fraud upon his mother and thereby declaration was claimed that the mortgage was null and void and the possession of the property which was allegedly taken by Chhoga Lal and Bajrang Lal unauthorizedly may be restored to him.

1. By a judgment and order dated 23.12.1964, Civil Judge Nagaur, Rajasthan dismissed the suit inter alia holding that Malchand, the plaintiff, failed to establish his adoption by Meghraj. It was further held that Malchand is not entitled to file the suit.

1. Being aggrieved thereby, Malchand filed an appeal being Appeal No.13/1965 before the District Judge, Merta and the learned District Judge vide judgment and order dated 6.7.1967 allowed the appeal No.13/1965 holding inter alia that Malchand is the adopted son of

Meghraj and, therefore, the decree for possession of the two houses described in para 3 of the plaint and mortgaged with Mrs. Lado was passed in favour of Malchand. He was directed to pay Rs.4000/- and Rs.2064/- as interest from the date of mortgage i.e.

4.3.1953 @ 9% per annum to the date of Suit i.e. 28.11.1958 to the defendants, in all Rs.6064/- and further interest at the rate of 6% per annum from the date of Suit till payment on the original Principal amount of Rs.4000/-.

It was also held that Malchand should be entitled to recover possession of two mortgaged houses described in para 3 of the plaint along with the Iron safe and Title deeds given to the defendants at the time of mortgage by Smt. Lado. While deciding the appeal, the learned District Judge also disposed of the cross-objection.

1. Thereafter, on 6.10.1968, the appellant filed an application being Civil Misc. Case No.6/1968 before the District Judge, Merta praying therein to specify some time for the payment of decretal amount. To that application being Civil Misc. Case No.6/1968, Malchand filed an opposition inter alia claiming that the suit

filed by him was for the possession of the property and not for the redemption of mortgaged property and, therefore, the Court cannot specify any time limit for the payment of decretal amount and the provisions of 12 years Limitation as prescribed for execution of decree shall apply to this case.

1. The learned District Judge, Merta vide an order dated 8.5.1969 dismissed the application of the appellant in Civil Misc. Application No.6/1968 inter alia holding that if the plaintiff i.e. Malchand comes with the execution of the decree, then it is up to the judgment debtors to take suitable objections in the said execution proceeding.

1. The appellant's contention is that the period of limitation which according to him is 12 years from the date of decree expired but Malchand neither paid the decretal amount specified in the decree nor got the decree executed. Thereafter on 4.10.1982 which is about 15 years from the date of decree Kesrimal, an Attorney holder of the Malchand, sold the said property to Om Prakash, the respondent herein. According to the

appellant, under the same Power of Attorney Malchand did not give any authority to Kesrimal to sell the property.

1. The subsequent purchaser Om Prakash, the respondent herein, filed an application on 12.10.1982 being Civil Misc. Case No.10/1984 under Order 34 Rule 8 of C.P.C before the Civil Judge, Merta praying for a Final Decree for the redemption of mortgage.

The said claim of the respondent was contested by the appellants, inter alia, on the ground that the original suit of Malchand was not for redemption of mortgage but it was a suit for declaration that the mortgage is null and void and for possession of the property.

It was also contended by the appellant that the original decree which was passed is the final decree and its execution is barred by limitation and the person who has executed the sale deed in favour of respondent herein has no authority to do so.

Ultimately, the Civil Judge, Merta by judgment and order dated 9.2.1988 allowed the Civil Misc. Application of the respondent and passed a Final Decree and the following order was passed:-

"Therefore the instant Application filed by Om Prakash under order 34 Rule 8 is allowed and it is ordered that after the compliance of Decree dated 6.7.1967 by the Applicant, Final Decree with regards to Property in question and Title deed be passed and on compliance of orders of Decree dated 6.7.1967, non-applicants shall hand over the mortgaged property and title deed to the Applicant."

10. Being aggrieved thereby, the appellant filed an appeal being Appeal No.3/1988 before the First Appellate Court and there also the learned District Judge, Nagaur dismissed the appeal by judgment dated 9.7.1990 and passed the following order:-

"This Court is of the opinion that there are no circumstances to set aside the Judgment dated 9.2.1988 and Decree dated 12.2.1988 passed by Civil Judge, Merta. Hence the Appeal fails and hereby dismissed."

11. Thereupon the appellants filed the Second Appeal No.63/1990 before the High Court challenging the order passed by the District Judge.

12. By the judgment under appeal the High Court dismissed the second appeal. In the said second appeal the following questions of law were framed:-

"(1) That Learned Addl. District Judge was not correct in holding the Decree-dated 6.7.1967 passed by the Learned District Judge in Civil Appeal No.13/65 to be a Preliminary Decree in the Suit for Redemption and it has further erred in holding that an Application for passing a Final Decree for Redemption was maintainable and it was within time.

(2) That Decree in dispute dated 6.7.67 passed by Learned District Judge, Merta in Civil Appeal No.13 of 1965 was a mere Decree for Possession on payment ascertained amount mentioned therein, which has become barred by Limitation under Article 136 of Limitation Act and was not capable of execution. Thus application under order 34 rule 8 was not maintainable and the Learned Judge has erred in holding that was maintainable.

(3) That even if it is consideration to be a Redemption Decree, it was Final Decree in Suit for Redemption, which also had become barred by Limitation under Article 136 of Limitation Act and thus Application under order 34 Rule 8 CPC was not maintainable.

(4) That the Learned Judge has misconstrued the alleged Power of Attorney executed in favour of Kesrimal by Malchand and has erred in interpreting the work "to be" "No authority was given to Kesrimal to sell the property in dispute or Decree in dispute, and therefore, the alleged Sale Deed in favour of Respondent No.1 Om Prakash is absolutely void."

13. The High Court in its judgment under appeal dealt with all the questions and came to a finding, and in our view rightly so, that the decree was passed in a case of recovery of possession of mortgage property and that was specifically a decree for redemption of mortgage property. The

High Court also held that the said decree attained finality as it was not challenged by the defendant judgment debtor. The High Court noted that the

present appellant only sought for early payment of the decretal dues by moving an application before the First Appellate Court. The High Court also

came to a finding that the decree dated 7.6.1967 was a preliminary decree and the plaintiff cannot be denied the opportunity of getting the time for depositing the amount for redeeming the mortgage property. The High Court rightly held that such

right is given under Order 34 Rule 7 of the Code.

It is clear that it was open to the defendant to take steps for passing final decree in terms of Rule 7 of Order 34 of the Code and that could have debarred the other side from redeeming the mortgage property. The defendant did not do so and the

decree holder ultimately deposited the amount in the Trial Court before final decree was passed.

The High Court also held that the power of attorney executed by Malchand allowed the power of attorney holder to have all powers including the authority to mortgage, sale or gift the property for any or philanthropic purposes. However, the High Court

concluded by saying that the decree dated 6.7.1967 was a preliminary decree and was passed for redemption of mortgage of the property and thereafter an application for passing final decree was filed within the period of limitation.

13. We affirm the view taken by the High Court. The appeal is, therefore, dismissed. No order as to costs.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi
March 30, 2009