

CASE NO.:
Appeal (civil) 3322 of 2008

PETITIONER:
Lachhman Singh (Deceased) through Legal Representatives & Ors

RESPONDENT:
Hazara Singh (Deceased) through Legal Representatives & Ors

DATE OF JUDGMENT: 06/05/2008

BENCH:
S.B. Sinha & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 3322 OF 2008
(Arising out of SLP (C) No.1395 of 2007)

S.B. Sinha, J.

1. Leave granted.
2. What would be the period of limitation in a suit for redemption of mortgage in the factual matrix involved in the present case is the question in this appeal which arises out of a judgment and order dated 19.7.2006 passed by the High Court of Punjab and Haryana in RSA No.1340 of 1980.
3. A transaction of mortgage in respect of the suit property admeasuring 58 kanals 11 marlas was entered into by and between the predecessors in the interest of the parties herein. The actual date of execution of the deed of mortgage was not known to the plaintiffs-respondents. However, the said mortgaged properties were mutated in the name of the mortgagees on or about 19.3.1913.
4. A suit for redemption of the said mortgage was filed by the respondents on or about 30.12.1970. The learned trial court, as also the First Appellate Court, dismissed the said suit as being barred by limitation opining that the actual date of mortgage being not known, a decree for redemption of mortgage could not be passed.
5. The High Court, however, in the second appeal preferred thereagainst by the respondent herein, formulated the following substantial questions of law :
"1. Whether the finding recorded by the learned first Appellate Court regarding relationship is sustainable?
2. Whether the suit for possession by way of redemption is within the period of limitation?"
6. It was held that in view of the fact that the relationship between the parties as mortgagor and mortgagee was proved, the onus to prove that suit was barred by limitation was on the defendants. The said Second Appeal on the said finding was allowed.
7. Mr. Shambhu Prasad Singh, learned counsel appearing on behalf of the appellant, would submit that the question of limitation being one of jurisdiction, the High Court committed a serious error in allowing the said second appeal. It was submitted that as the date of mutation was not the date of mortgage, the suit should have been held to be barred by limitation.
8. Mr. Manoj Swarup, learned counsel appearing on behalf of the respondents, on the other hand, has drawn our attention to an application filed by the respondent for adduction of additional evidence, as envisaged

under Order 41 Rule 27 of the Code of Civil Procedure and submitted that the deed of mortgage which was registered in Village Pangota, Tehsil Taran Taran in the District of Amritsar, now in Pakistan, could be procured by the respondents which, if taken into consideration, would clearly establish that the suit was within the prescribed period of limitation having been executed on 20.2.1913.

The relationship between the parties is not in dispute. Respondents filed the aforementioned suit for a decree for redemption of mortgage on payment of a sum as may be found due to the appellants herein. The details of the mortgage were furnished but the actual date of mortgage being not known could not be furnished.

Sohan Singh and Bahadur Singh were the original mortgagors. Sohan Singh is said to have been not seen 10 years prior to the institution of the suit and, thus, presumed to be dead. Respondents are said to have inherited the properties of the said mortgagors and, thus, stepped into their shoes. In the written statement, the respondent denied and disputed the relationship between the parties, stating :

"1. Para No.1 of the plaint is wrong and incorrect. The suit land is not of the plaintiffs. Rather the total land is under the permanent continuing possession of defendant No.1. The land in dispute as mentioned in para No.1 of the plaint filed by the plaintiffs never mortgaged with the defendants and the facts mentioned in para No.1 of the plaint regarding the alleged mortgaged are forged and fictitious one and the plaint is not with me."

9. The defendant claimed the ownership as also possession of the suit land in himself. The courts below, as noticed hereinbefore, found that there existed a relationship of mortgagor and mortgagee between the parties to the lis. The suit was dismissed only on the ground of being barred by limitation. The High Court was, in our opinion, entirely wrong in holding that the onus to prove that the suit was beyond the period of limitation was on the defendants. Limitation is a question of jurisdiction. Section 3 of the Limitation Act puts an embargo on the court to entertain a suit if it is found to be barred by limitation.

10. It appears that before the High Court also, an application for adduction of additional evidence was filed. No order thereupon was passed. Respondents, in our opinion, have made out a case for adduction of additional evidence.

It was stated that the mortgage deed was registered in the year 1913 in the District of Lahore. As it is a registered document, this Court in a situation of this nature, keeping in view the findings of the courts below, should allow the said application.

11. There cannot be any doubt whatsoever that the court should be loathed to entertain such an application but the respondents have herein made out adequate grounds therefor.

The jurisdiction of the Appellate Court is to be exercised not only when clause (a) or clause (aa) of sub-rule (1) of Rule 27 of Order 41 of the Code is attracted but also when such a document is required by the appellate Court itself to pronounce judgment or for any other substantial cause. If what the respondents contended is correct, namely, the mortgage was executed in 1913, the period of limitation having been prescribed under the old Limitation Act, namely, 60 years being the period of limitation having regard to the provisions of the new Limitation Act, the suit could be filed within a period of seven years from 1.1.1964, i.e. upto 1.1.1971. As the suit was filed on 30.12.1970, it may be held to be within the prescribed period of limitation.

12. We are of the opinion that keeping in view the peculiar facts and circumstances of this case, the respondents should be permitted to adduce evidence. We, therefore, set aside the impugned judgment and remit the matter back to the High Court directing it to take the additional evidence on record either allowing the parties to adduce evidence before it or to prove the

said documents by the trial judge in terms of Order 41 Rule 28 of the Code. Appeal is allowed to the above extent. No costs.

JUDIS