

Before Mr. Justice Bennet and Mr. Justice Verma

1938
November, 1

**IQAN HUSAIN AND ANOTHER (APPLICANTS) v. BABU RAM
(OPPOSITE PARTY)***

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 12—Usufructuary mortgage, made before the Act, and fully satisfied from the usufruct—No deposit to be made—Applicability of the section—U. P. Agriculturists' Relief Act, section 27.

An application can be made under section 12 of the U. P. Agriculturists' Relief Act in a case of a usufructuary mortgage, made before the Act, which has been fully satisfied from the usufruct and so no deposit is to be made by the applicant. The fact that the language in section 12 and section 16 refers to the money deposited by the applicant does not rule out the case of an applicant who makes no deposit as he states that no sum is due.

The legislature intended section 12 to be a residuary section to section 11 and to embrace all mortgages by an agriculturist not dealt with in section 11.

Section 27 of the U. P. Agriculturists' Relief Act states that the provisions of the Civil Procedure Code in regard to suits shall be followed, so far as they can be made applicable, in all proceedings under chapter III. Accordingly order XXXIV, rules 7 and 9, of the Code will apply in a case like the present, and where on taking an account under section 16 of the Act the court finds that nothing is due from the applicant the court will pass a decree for possession in his favour, and may award him any amount found due to him.

Mr. *Mushtaq Ahmad*, for the appellants.

Mr. *S. N. Seth*, for the respondent.

BENNET and VERMA, JJ.:—This is a first appeal from order by certain applicants under section 12 of the U. P. Agriculturists' Relief Act of 1934 who applied for redemption of a usufructuary mortgage, prior to the Act, for Rs.10,000, dated the 5th of July, 1927, executed by the applicants and their father in favour of the opposite party No. 1, Sahu Babu Ram. The mortgage

*First Appeal No. 323 of 1937, from an order of Riazul Hasan, Additional Civil Judge of Moradabad, dated the 20th of November, 1937.

in question was for a term of 10 years from 1335 Fasli to 1344 Fasli ending on 30th June, 1937. Under its terms the mortgagee was to appropriate all the profits for 10 years in full satisfaction of the entire mortgage money, principal and interest, and at the end of the year 1344 Fasli, that is on 30th June, 1937, the mortgaged property was to be returned to the mortgagors free of any incumbrance or charge under the mortgage. The mortgagees had failed to deliver possession on this date and therefore the application was made for redemption on 24th July, 1937. No deposit was made because the entire mortgage money had been fully paid up. The learned Additional Civil Judge had a question before him as to whether the application would lie under section 12 of the U. P. Agriculturists' Relief Act and he held that it would not and he dismissed the application. His grounds were that section 12 of the Act does not apply to the case when nothing is due to the mortgagee on account of the mortgage money and when no deposit has been made and that the form prescribed by the rules under the Act must be used for an application and that form shows that mention should be made of the amount of money deposited for redemption, and therefore some deposit must be made. The view which he took was that the Act was defective and although mortgages of this nature were dealt with by section 11, the Act had omitted to deal with them under section 12.

The question is whether an application can be made under section 12 of the Agriculturists' Relief Act in a case like the present where the mortgage was made before the Act and provided that the usufruct for the period was to discharge the principal and interest of the mortgage money. The reasoning of the trial court is as follows. Section 11 deals with such mortgages executed after the Act and provides for an application by the person entitled to possession after the expiry of the period. Section 12 does not refer specifically to such mortgages, but refers to mortgages made before or after

1938

 IQAN
 HUSAIN
 C.
 BABU
 RAM

1938

IQAN
HUSAIN
v.
BABU
RAM

the Act, and directs the applicant to state the sum which he believes to be due and to deposit it in court. The lower court also states that the principle of section 62(a) of the Transfer of Property Act does not appear to be embodied in section 12. It has also been argued that the opening words in section 12, "Notwithstanding anything contained in section 83 of the Transfer of Property Act", imply that section 12 is limited to such cases where section 83 would apply, that is cases where the applicant desired to stop the interest running on the balance by making the deposit, as is provided in section 84.

The trial court has concluded that such a mortgage made before the Act does not come under section 12 and that the applicant must file a suit for redemption in the civil court, and has dismissed the application.

To deal with these points it is necessary to analyse chapter III of the Agriculturists' Relief Act. That chapter is headed "Mortgages and their redemption" and section 24 limits the applications under the chapter to agriculturists. Section 25 bars suits in the civil court for any relief which can be obtained by application under the chapter. It is clear that the intention was to deal comprehensively with all cases of redemption by agriculturists. The first section of the chapter, section 9, deals with a particular kind of mortgage, after the Act, of a particular kind of property; there is a direction that "no mortgage of land or grove by an agriculturist made after the commencement of this Act shall be valid if, under the terms of such mortgage, possession is delivered . . . unless" the usufruct is to pay off both interest and principal in a term not exceeding 20 years. Explanation (1) defines land as a mahal or part of a mahal or plots in a mahal.

The same kind of mortgage is apparently referred to in section 11, as a mortgage for possession made after the commencement of the Act, and the section provides for an application by the person entitled to possession,

on which the court shall direct that the mortgage be redeemed and eject the mortgagee and may direct him to pay compensation to the mortgagor if necessary.

We then come to section 12 which provides as follows:

“Notwithstanding anything contained in section 83 of the Transfer of Property Act, 1882, or any contract to the contrary, an agriculturist who has made a mortgage either before or after the passing of this Act, or any other person entitled to institute a suit for redemption of the mortgage, may, at any time after the principal money has become due, and before a suit for redemption is barred, file an application before the court within whose jurisdiction the mortgaged property or any part of it is situate, in such form and giving such particulars as the Local Government may by rule prescribe, and praying for an order directing that the mortgage be redeemed, and, where the mortgage is with possession, that he be put in possession of the mortgaged property. The application shall be duly verified in the manner prescribed by law for the verification of plaints and shall state the sum which the applicant declares to the best of his belief to be due under the mortgage. The applicant shall at the same time deposit such sum with the court.”

There remain the following classes of mortgages to be dealt with in section 12 which had not been dealt with in the previous sections 9 and 11:

1. Simple mortgages of any sort;
2. Usufructuary mortgages of any sort before the Act;
3. Usufructuary mortgages after the Act of property not land or groves under section 9.

Redemption will be made of such mortgages by paying the balance of the mortgage money due, except in a case under 2 or 3 where the usufruct has left no balance due, or a case where the whole balance has been paid. Under the ordinary law in the Transfer of Property Act redemption is provided for in section 60, which is a

1938

 IQAN
 HUSAIN
 v.
 BABU
 RAM

1938

IQAN
HUSAIN
v.
BABU
RAM

general section, and there is a special case referred to in section 62(a), where the usufruct has paid off the principal and interest. Section 83 has nothing to do with the right of redemption, but is merely a method of avoiding further interest on the balance, as is provided in section 84. If the mortgagee does not agree to take the amount deposited under section 83, the mortgagor must file a regular suit. To such a suit order XXXIV of the Civil Procedure Code applies, and rule 7 directs a preliminary decree for the taking of accounts. Rule 9 provides that if on the taking of these accounts it is found that nothing is due to the defendant or that he is overpaid, the court shall pass a final decree directing the defendant to re-transfer the property and to pay to the plaintiff the amount which may be found due to him, and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

Now if the present case is taken to the civil courts, this will be the procedure. There will be no need for any application or deposit under section 33, but a suit will be filed and a preliminary decree passed for accounts, and on nothing being found due, then the order will be for possession. Exactly the same procedure will apply for a preliminary decree for accounts as in a case where there is still a balance due to be paid by the mortgagor. Section 27 of the Agriculturists' Relief Act states that the provisions of the Civil Procedure Code in regard to suits shall be followed, so far as they can be made applicable, in all proceedings under chapter III. Accordingly order XXXIV, rules 7 and 9 will apply to an application under section 12, and where on taking an account the court finds that nothing is due from the applicant the court will pass a decree for possession in his favour, and may award him any amount found due to him.

Section 12 is framed as a general section to cover the three classes of mortgages already set out. It is a general section in the same way that section 60 of the Transfer

of Property Act is a general section giving a right of redemption, and just as section 60 does not refer to the particular case of a mortgage like the present, the Agriculturists' Relief Act, section 12, does not refer in express words to that case. If it be argued that the Act should have provided a special reference to the present class of case, there is the reply that order XXXIV, rule 9 deals with such a case, and is applied by section 27 of the Act.

The lower court is not correct in making the distinction between sections 11 and 12 turn on whether the mortgage money has been paid off by the usufruct or not. The distinction lies in the points shown in the attached table*. The main distinctions are that section 12 may apply to either simple or possessory mortgages, before or after the Act, and the property mortgaged may be any property, land, houses, etc., with the exception of the possessory mortgages after the Act dealt with in section 11.

Section 11 is a complete section, with its own procedure prescribed in it. Section 12 is followed by sections dealing with procedure, of which section 16

*COMPARATIVE TABLE : SECTIONS 11 AND 12

Section	Kind of mortgage	When made	Nature of property	Who may sue	Law supplanted by this section	Law still applicable
11	Possessory	After Act.	Land in m. hal or grova (like section 9).	Person entitled to possession if agriculturist.	Sections 60 and 62(a) of the Transfer of Property Act.	Section 27 applies the Civil Procedure Code.
12	Simple or possessory.	Before or after Act.	Any property, land, houses, etc.	Agriculturist mortgagor or other person entitled to sue for redemption if agriculturist (section 24).	Sections 60 and 83 of the Transfer of Property Act.	Section 27 applies the Civil Procedure Code (i.e., order XXXIV, rules 7 and 9); section 62(a) of the Transfer of Property Act.

1938

IQAN
HUSAIN
P.
BABU
RAM

1938

IQAN
HUSAIN
v.
BABU
RAM

directs the court to hold an inquiry which would be similar to the inquiry under order XXXIV, rule 7, only a formal preliminary decree need not be drawn up. We do not think that the fact that the language in section 16 and section 12 refers to the money deposited by the applicant rules out the case of an applicant who makes no deposit as he states that no sum is due, any more than order XXXIV, rule 7, which uses similar language ("that, if the plaintiff pays into court the amount so found or declared due" etc.) rules out a similar case, which in fact comes under rule 9.

We think that the legislature intended section 12 to be a residuary section to section 11 and to embrace all mortgages by an agriculturist not dealt with in section 11. We think, in view of section 27 which applies the Civil Procedure Code and the provisions of order XXXIV, rules 7 and 9, that a reasonable interpretation of sections 12 and 16 covers the present application.

For these reasons we allow the first appeal from order with costs and we remand the application for disposal by the lower court. Costs hitherto incurred in the court below will abide the result.

Before Mr. Justice Collister and Mr. Justice Hunter

ISRI PRASAD TEWARI (PLAINTIFF) v. CHANDRABHAN
PRASAD TEWARI (DEFENDANT)*

1938
November, 1

Limitation Act (IX of 1908), section 19—Acknowledgment—Payment of a sum "in respect to" or "relating to" a promissory note—Whether acknowledgment of any further liability—Question to be decided upon wording of the endorsement—Extrinsic circumstances irrelevant.

An endorsement on a promissory note that Rs.25 were paid in respect to, or relating to, ("*babat pro-note haza ke*") that promissory note does not amount to an acknowledgment, within the meaning of section 19 of the Limitation Act, of liability for any further sum. The case would be different if

*Second Appeal No. 768 of 1936, from a decree of S. B. Chandiramani, District Judge of Gorakhpur, dated the 31st of January, 1936, reversing a decree of Niyaz Ahmad, First Additional Civil Judge of Gorakhpur, dated the 11th of January, 1935.