

APPELLATE CIVIL.

Before Mr. Justice Muhammad Raza and Mr. Justice
Bisheshwar Nath Srivastava.

CHHOTAY SINGH AND ANOTHER (DEFENDANTS-APPELLANTS) V. SURAT SINGH AND OTHERS (PLAINTIFFS AND DEFENDANTS-RESPONDENTS.)*

1929
December,
23.

Transfer of Property Act (IV of 1882), section 91(a) and (b)—Hindu law—Mortgage by a Hindu—Widow of mortgagor in possession—Reversioner's right to redeem in the lifetime of the widow—Waste or necessity of preservation of property, how affect a reversioner's right to redeem.

Held, that apart from any case of waste or necessity for preservation of the property, a reversioner in the lifetime of a Hindu widow is not a person having any interest in the mortgaged property or in the right to redeem it within the meaning of clauses (a) and (b) of section 91 of the Transfer of Property Act. The interest referred to in those clauses which can entitle a person to redeem or institute a suit for redemption must be a present interest in the mortgaged property or in the equity of redemption.

The position of a reversioner during the lifetime of a Hindu widow is nothing more than that of the person with a mere *spes successionis* and he cannot therefore have any right to redeem or institute a suit for redemption while the widow is alive. *Sheoratan Singh and another v. Hubba Singh and another* (1), *Gumani Singh v. Chakkar Singh and another* (2), *Jangi Ram and others v. Chaudhri Sheoraj Singh and another* (3), and *Basawan v. Natha and others* (4), dissented from, *Amrit Narayan Singh v. Gaya Singh and others* (5), *Thakur Basant Singh v. Thakur Rampal Singh and another* (6), and *Ram Chandra v. Kallu and others* (7), relied on.

Narayana Kutti Goundan v. Pechiammal and others (8), *Davis v. Angel* (9), *Stockley v. Parsons* (10), and *Green v. Meinall* (11), referred to.

*Second Civil Appeal No. 247 of 1929, against the decree of S. Asghar Hasan, District Judge of Hardoi, dated the 1st of May, 1929, reversing the decree of Babu Jagdamba Saran, Additional Subordinate Judge of Hardoi, dated the 30th of April, 1928, dismissing the plaintiffs' claim.

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| (1) (1894) Select Case No. 271. | (2) (1905) 8 O.C. 349. |
| (3) (1914) 2 O.L.J., 338. | (4) (1924) 11 O.L.J., 452. |
| (5) (1917) L.R., 45 I. A., 35. | (6) (1919) 6 O.L.J., 248. |
| (7) (1908) I.L.R., 30 All., 497. | (8) (1911) I.L.R., 36 Mad., 426. |
| (9) (1862) 45 E. R., 1287. | (10) (1890) 45 Ch.D., 51. |
| (11) (1911) 2 Ch.D., 275. | |

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Messrs. *Radha Krishna* and *Raj Bahadur*, for the appellants.

Messrs. *M. Wasim*, *Raj Bahadur B. Mohan Lal* and *S. C. Das*, for the respondents.

RAZA and SRIVASTAVA, JJ. :—This is a second appeal against the judgment and decree, dated the 1st of May, 1929, passed by the District Judge of Hardoi reversing the decision, dated the 30th of April, 1928, passed by the Additional Subordinate Judge of the same place. It arises out of a suit for redemption of a mortgage, dated the 7th of December, 1882, executed by Laltu Singh, husband of Musammat Ganeshi, who was originally impleaded as defendant No. 1, in the suit. The mortgage was for Rs. 4,000 in favour of Girindra Singh, grandfather of Chhotey Singh, defendant No. 2. The remaining defendants in the suit were impleaded as subsequent transferees and as persons holding rights of grove-holders from the defendant No. 2. The plaintiff, Surat Singh, claimed the right to redeem the mortgage on the ground that he was the presumptive reversioner of Laltu Singh on the death of Musammat Ganeshi. Chhotey Singh and Musammat Ganeshi contested the suit. Chhotey Singh raised various pleas in defence, but the only plea with which we are now concerned is the legal one as regards the plaintiff's right as reversioner to redeem the mortgage in the lifetime of the widow. Musammat Ganeshi denied the plaintiff's title as a reversioner.

The learned trial Judge found that in the lifetime of a Hindu widow the reversioner cannot be considered to have any interest in the property within the meaning of section 91 of the Transfer of Property Act which could entitle him to institute a suit for redemption. He dismissed the suit accordingly. On appeal the learned District Judge has disagreed with the opinion of the trial Judge and held that the plaintiff Surat Singh is entitled to redeem the property.

Before we enter into a discussion of the question of law arising for determination in this appeal, it is necessary to mention that on the 25th of April, 1928, the plaintiff made a statement in the trial court discharging Musammat Ganeshi, defendant No. 1, from the array of parties in the case, but this fact appears to have been overlooked when the plaintiff filed his appeal in the court of the District Judge, as she was impleaded as a respondent in the appeal. The attention of the learned District Judge also does not seem to have been drawn to the fact that Musammat Ganeshi had ceased to be a party to the suit in the trial court, because we find that he has decreed the plaintiff's suit not only against Chhotey Singh, but also against Musammat Ganeshi.

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It is under these circumstances that the present appeal has been filed both by Chhotey Singh and Musammat Ganeshi. The main contention urged in support of the appeal is that the plaintiff as a reversioner has in the lifetime of Musammat Ganeshi, the widow of Laltu Singh, no present interest such as could entitle him to maintain a suit for redemption. Section 91 of the Transfer of Property Act provides that besides the mortgagor any of the following persons may redeem or institute a suit for redemption of the mortgaged property :—

- “(a) any person (other than the mortgagee of the interest sought to be redeemed), having any interest in or charge upon the property;
- (b) any person having any interest in or charge upon the right to redeem the property; . .

The plaintiff's position is that as a reversioner he is a person having an interest in the property as well as an interest in the right to redeem the property within the meaning of clauses (a) and (b) of section 91 quoted above.

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In *Davis v. Angel* (1) the Lord Chancellor Lord WESTBURY made the following observations :—

“But though the distinction is a fine one yet it perfectly exists and is easily apprehended—I mean the distinction between an interest that has arisen and is represented, and an interest that has not arisen and that never may arise, but with regard to which there is a remote possibility that the event which has not occurred and upon which it is made to hang may hereafter occur. The latter is not an interest, it is not a right; it is nothing more than a bare expectation of a future right. The expectation of a future interest, or rather, of a future event that may give an interest, is not a thing which would justify a Court of Equity in entertaining a suit at the instance of a party having that and nothing more.”

These remarks seem to us quite apposite to describe the status of the plaintiff in the present case. In *re Parsons. Stockley v. Parsons* (2), Justice KAY remarked that” :—

“It is indisputable law that no one can have any estate or interest, at law or in equity, contingent or other, in the property of a living person to which he hopes to succeed as heir at law or next of kin of such living person. During the life of such person no one can have more than a *spes successionis*, an expectation or hope of succeeding to his property.”

In *re Green. Green v. Meinall* (3), WARRINGTON, J., dealing with the *spes successionis* which the brother

(1) (1862) 45 E.R., 1287.

(2) (1850) 45 Ch. D., 51.

(3) (1911) 2 Ch. D., 275.

of a person has during his lifetime to a share in his property observed as follows :—

“Is it possible to say that this *spes successionis* is a ‘right, title, estate or interest in expectancy, in, to, or in respect of property’. In my opinion it is not.”

In *Amrit Narayan Singh v. Gaya Singh and others* (1) their Lordships of the Judicial Committee referring to the case of a Hindu reversioner observed that :—

“A Hindu reversioner has no right or interest in *praesenti* in the property which the female owner holds for her life. Until it vests in him on her death, should he survive her, he has nothing to assign or to relinquish, or even to transmit to his heirs. His right becomes concrete only on her demise; until then it is mere *spes successionis*.”

Thus we have little doubt that the interest referred to in clauses (a) and (b) of section 91 of the Transfer of Property Act which can entitle a person to redeem or institute a suit for redemption must be a present interest in the mortgaged property or in the equity of redemption. It would hardly be in consonance with sound principles of jurisprudence to construe the terms of these clauses so as to give a right of suit to a person who has no interest whatever at present and has at best in the words of Lord WESTBURY in *Davis v. Angel* (2) cited above, nothing more than “an expectation of the possibility of a future event which, if it occurs, may give birth to an interest.” It is also clear that the position of a reversioner like the plaintiff during the lifetime of a Hindu widow is nothing more than that of the person with a mere *spes successionis*. It would therefore follow that a person in the position of the plaintiff cannot have any right to redeem

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(1) (1917) L.R., 45 I.A., 35.

(2) (1862) 45 E.R., 1287.

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or institute a suit for redemption while the widow is alive. We are strengthened in this conclusion by the consideration of the many anomalies, complications and difficulties which would arise in case such a right of redemption is conceded to a reversioner in the widow's lifetime. Order XXXIV, rule 1 of the Code of Civil Procedure provides that "all persons having an interest either in the mortgage security or in the right of redemption shall be joined as parties to any suit relating to the mortgage." If the reversioner is recognized as a person having an interest within the meaning of clauses (a) and (b) of section 91 of the Transfer of Property Act, he must also be considered to be a person having an interest in the mortgage security or in the right of redemption within the meaning of order XXXIV, rule 1 of the Code of Civil Procedure. The result of this would be that in all suits for foreclosure, sale and redemption it will be obligatory on the plaintiff to implead the reversioner. To carry the matter to its logical conclusion, it should be necessary to implead not only the presumptive reversioner, but the whole body of reversioners. If the presumptive reversioner has such an interest as is referred to in order XXXIV, rule 1 of the Code of Civil Procedure, it can hardly be said that a more remote reversioner is not possessed of a similar interest. It is merely a matter of the degrees of possibility between one reversioner and another. It is obvious that it will be laying a heavy burden upon plaintiffs in such cases to make a search for the reversioners and to implead them. Again the question would arise whether if the reversioner is allowed to maintain such a suit for redemption, the suit should be considered to have been instituted by him in his representative capacity or otherwise? When we questioned Mr. *Wasim*, the learned Counsel for the plaintiff-respondent on this point, he, realizing the difficulties of the position, said that he would not claim a suit like the present one to be a representative suit. If this is so then

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there can be no end of such suits, because each reversioner may claim to exercise his right to institute a suit for redemption. Order XXXIV, rule 7, provides that the decree for redemption shall direct the plaintiff to pay the mortgage money "on a day to be fixed by the court, and that if such payment is not made on or before the day to be fixed by the court, the plaintiff shall (unless the mortgage is simple or usufructuary) be debarred from all right to redeem or (unless the mortgage is by conditional sale) that the mortgaged property be sold. Suppose the mortgaged property is sold. What would be the position then of the widow or of the actual reversioner, if he happens to be a person different from the plaintiff, in case they want to redeem the property? Again, what would be the position as regards the right of the actual reversioner to challenge the mortgage on the ground of its being without any legal necessity, in case he happens to be a person different from the reversioner who has redeemed the mortgage? Further it is conceivable that difficulties and complications might arise as regards the position of a reversioner who makes the redemption in relation to the mortgaged property and as regards the limitation governing a suit brought by the widow or by the actual reversioner to recover the property from him or his representatives.

Mr. *Wasim* on behalf of the plaintiff laid emphasis on the fact that if the reversioner is not allowed to redeem there may be cases in which the mortgage money might swell into a huge amount which might make the redemption impossible or cases in which the widow might allow the right of redemption to become barred by time. He has also argued that as it is well settled that the reversioner has a right to demand that the estate should be kept free from waste and free from danger during its enjoyment by the widow, so there is no reason why he should not similarly be allowed to redeem the property at least for the protection of the estate. It is not necessary for us in the present case to decide whether

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a reversioner should or should not be allowed to redeem the property, where he succeeds in making out a case on the ground of the redemption being necessary for the preservation or protection of the property. It is sufficient to say that the learned Counsel for the plaintiff Surat Singh has not urged any arguments before us on this ground.

Reliance has also been placed by Mr. *Wasim* on some decisions of the late Judicial Commissioner's Court. The first case relied upon is *Sheoratan Singh and another v. Hubba Singh and another* (1). In this case Mr. SPANKIE, A. J. C., formulated the question arising for determination in the case in the following terms :—

“The question I have to decide seems therefore to be whether the plaintiffs, as presumptively entitled to the possession of the lands on the death of the widow, if they survive her, have only a *spes successionis* or have an interest in the lands and in the right to redeem them.”

He answered this question by holding that “the expectancy of succession which the person has who is presumptively entitled to possession on the death of a Hindu widow, if he survive her, seems to be a possibility coupled with an interest.” He based his conclusion upon the grounds that such a reversioner has a right to sue to preserve the property and to obtain a declaration in respect of alienations made by the widow without legal necessity. With all respect we find ourselves unable to accept the decision as correct. The fact, that a reversioner is interested in the preservation of the property and has therefore been allowed to institute such suits, does not mean that he has any present interest in the property which could entitle him to maintain a suit for redemption.

(1) (1894) Select Case No. 271.

Further in the face of the very definite and clear pronouncement of their Lordships of the Judicial Committee in *Amrit Narayan Singh v. Gaya Singh and other* (1), to which we have made reference above, it can hardly be possible to say now that the position of a Hindu reversioner is in any way better than that of a mere possibility.

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The next case relied upon is *Gumani Singh v. Chakkar Singh and another* (2) in which a Bench of the Judicial Commissioner's Court approved and followed the decision of MR. SPANKIE in *Sheoratan Singh and another v. Hubba Singh and another* (3). In this case it was remarked that section 91 of the Transfer of Property Act allows the right of redemption to "persons as remotely, if not more remotely interested in the property than a reversioner have a right to redeem." With due respect to the learned Judges we would point out that all persons who have been allowed the right of redemption in this section are persons having a present interest in the property. *Jangi Ram and others v. Chaudhri Sheoraj Singh and another* (4) was also referred to. In this case another Bench of the same court made a remark with reference to the decision in *Gumani Singh v. Chakkar Singh and another* (2) that the reversioner's rights to redeem cannot be denied. It might be pointed out that the remark is a mere *obiter dictum* and in any case it does not carry us beyond the decision in *Gumani Singh v. Chakkar Singh and another* (2) on which the remark is founded.

The last case relied upon is *Basawan v. Natha and others* (5) decided by a single Judge of the late Judicial Commissioner's Court. In this case also the decision in *Gumani Singh v. Chakkar Singh and another* (2), was followed. It was also argued that we ought to follow

(1) (1917) L.R., 45 I. A., 35. (2) (1905) 8 O. C., 349.

(3) (1894) Select Case No. 271. (4) (1914) 2 O. L. J., 338.

(5) (1924) 11 O. L. J., 452.

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the view taken in these cases on the principle of *stare decisis*. As regards this, it would be sufficient to say that the decisions of the late Judicial Commissioner's Court are not binding upon us. Further in a matter like the one involved in this case there can be no apprehension of our unsettling any settled rights. At best it would prevent persons in the position of plaintiff from instituting such suits hereafter. Moreover we think that the course of decisions even in the late Judicial Commissioner's Court was not altogether uniform. In *Musammam Jot Kwar v. Lakha Singh* (1), Pandit KANHAIYA LAL (afterwards Mr. Justice KANHAIYA LAL) did not go the length of the view taken in *Sheoratan Singh and another v. Hubba Singh and another* (2) and *Gumani Singh v. Chakkar Singh and another* (3) but adopted, if we may say so, a middle position in holding that the reversioner could be allowed to redeem the mortgage, where it was necessary for the protection of the property. In *Thakur Basant Singh v. Thakur Rampal Singh and another* (4) a Bench consisting of Messrs. DANIELS and LYLE overruled the decision in *Gumani Singh v. Chakkar Singh and another* (3) and held that the reversioner has no more than a *spes successionis* and has not therefore any present interest in the property within the meaning of section 91 of the Transfer of Property Act so as to enable him to redeem a mortgage in respect of the property.

The view which we have taken above is supported by the decision in *Ram Chandra v. Kallu and others* (5) in which a Bench of the Allahabad High Court consisting of Sir JOHN STANLEY, C. J. and Mr. BANERJI, J., held that the reversionary heirs of the deceased husband of a Hindu widow in possession as such of her husband's property are not persons who, within the meaning of section 91 of the Transfer of Property Act, 1882, have such

(1) (1914) 4 O. & A.I.R., 493.

(2) (1894) Select Case No. 271.

(3) (1905) 8 O.C., 349.

(4) (1917) 6 O.L.J., 248.

(5) (1908) I.L.R., 30 All., 497.

an interest in the mortgaged property, as would entitle them during the lifetime of the widow to redeem a mortgage made by the husband. We are in entire agreement, if we may say so with respect, with the reasons given by the learned Judges in support of their decision. In *Narayana Kutti Goundan v. Pechiammal and others* (1), SUNDRA AYYAR, J., held that a reversioner cannot voluntarily claim to redeem a mortgage made by the last male holder or institute a suit for that purpose, but he was of opinion that where a suit is instituted by a mortgagee for sale such a reversioner would be entitled to discharge the mortgage to prevent the loss of the property to which he would be entitled to succeed on the death of the widow. In *Saranga Sesha Naidu v. Periasani Odayar* (2), RAMESAM, J., held that the reversioner cannot sue to redeem during the lifetime of the widow, but was inclined to the opinion that where the appropriate allegations are made and the facts are proved, to the effect that the intervening female's conduct is such as to raise the apprehension that the property will never be redeemed or altogether lost to a transferee, the reversioner should be allowed to maintain an action for the preservation of the property, on the same principle that actions to retain waste are allowed.

It might be necessary for us in some case hereafter to decide as regards the right of a reversioner to maintain a suit for redemption on the ground of its being necessary for preservation of the estate, or as regards his right to discharge the mortgage when a suit is instituted by the mortgagee for sale or foreclosure but as we have stated before, these questions do not arise in this case and it is not therefore necessary for us to express any opinion about them. All that we decide is that apart from any case of waste or necessity for preservation of the property a reversioner in the lifetime of a Hindu widow like the plaintiff in the present case is not a person having any interest in

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(1) (1911) I.L.R., 36 Mad., 426. (2) (1921) I.L.R., 44 Mad., 951.

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the mortgaged property or in the right to redeem it with-
in the meaning of clauses (a) and (b) of section 91 of the
Transfer of Property Act. The result therefore is that
the claim of the plaintiff which has been pressed on the
basis of his right as a reversioner simpliciter must fail.

For the above reasons we allow the appeal, set aside
the decree of the lower appellate court and dismiss the
plaintiff's suit with costs in all the three courts.

Appeal allowed.

APPELLATE CIVIL.

*Before Mr. Justice Wazir Hasan and Mr. Justice Bisheshwar
Nath Srivastava.*

1930
January, 3.

PRAG DIN (PLAINTIFF-APPELLANT) v. NANKAU SINGH
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*Transfer of Property Act (IV of 1882), section 68—Mortgage
with possession—Part of the mortgaged property acquired
by Government—Mortgagee, whether entitled to get the
compensation money—Substituted security, case of.*

On a plain interpretation of section 68 of the Transfer of
Property Act it is clear that a mortgagee has a right to call
upon the mortgagor to give another sufficient security, but he
is not bound to do so. Where part of the subject of the secur-
ity has assumed a new form it is a case of substituted security
and on general principles the mortgagee is entitled to take
possession of the new form of the security.

Where portion of the mortgaged property is acquired
under the Land Acquisition Act the money paid by the Gov-
ernment as compensation for a part of the mortgaged estate is
impressed with the same liability as the land for which it is
the compensation and is thus a security in the new form and
the mortgagee is entitled to get that money. *Sajjadi Begam*
v. *Musammat Janki Bibi* (1), and *Ladli Prasad v. Nizam-ud-*
din Khan (2), distinguished. *Venkatrama Iyer v. Esuinsa*

* Second Civil Appeal No. 231 of 1929, against the decree of
M. Humayun Mirza, Subordinate Judge of Lucknow, dated the 19th July,
1929, confirming the decree of Babu Bhagwati Prasad, First Munsif, District
Lucknow, dated the 11th of February, 1929.

(1) (1917) 20 O.C., 256.

(2) (1919) 22 O.C., 342.