

1929

RAM  
KISHAN  
v.  
BABU  
KUNDAN  
LAL.\*

at the same conclusion. The order of the Assistant Collector, dated the 26th of September, 1927, is founded on the decree passed by the Munsif. This decree was subsequently modified by the Court of Appeal. In so far as the foundation of the Assistant Collector's order had been removed by the appellate court, there remains nothing to support it. The order of the Assistant Collector must, therefore, be deemed to be subject to the order of the appellate court.

For the above reasons we are of opinion that the decision arrived at by the learned District Judge is correct. The appeal fails and is dismissed with costs.

*Appeal dismissed.*

#### APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice Muhammad Raza.*

1929  
December,  
18.

RAGGHU SINGH AND OTHERS (PLAINTIFFS-APPELLANTS)  
v. DEPUTY COMMISSIONER, SITAPUR,  
MANAGER, COURT OF WARDS KATESAR  
ESTATE, (DEFENDANT-RESPONDENT).\*

*Limitation Act (IX of 1908), article 148—Mortgage of Nawabi times—Mortgagee agreeing that if he did not pay up by a certain date he would lose all his rights and would hand over possession—Default in payment—Possession actually handed over long after the time fixed—Mortgagee in possession ever since—Redemption suit when barred by limitation—Oudh Estates Act (I of 1869), section 6—Section 6 of Act (I of 1869), applicability of.*

A mortgage without possession of certain villages was executed in January, 1846, and the mortgagor agreed that if he did not pay the amount due in 1848 he would lose all his rights and would hand over possession to the mortgagees and admittedly nothing was paid and the villages were handed over to the mortgagee in 1852 and the mortgagee remained in possession of them ever since.

*Held*, that the suit for redemption brought in 1928 was barred by limitation under article 148 of the first schedule of

\*Second Civil Appeal No. 74 of 1929, against the decree of Mr. Gokul Prasad, Subordinate Judge of Sitapur, dated the 15th of November, 1928, confirming the decree of Pandit Pradyumn Kishen Kaul, Munsif of Sitapur, dated the 21st of May, 1928.

1929

---

 RAGHU  
SINGH  
v.  
DEPUTY  
COMMISSIONER,  
SITAPUR.

the Limitation Act, the period of limitation being 60 years from the date when the right to redeem or to recover possession accrues. The right to redeem under the mortgage accrued as soon as the mortgage was executed and possession did not pass until after the right to redeem disappeared under the terms of the mortgage. At best the right to recover possession may be said to have accrued at the latest in 1852 after the possession had passed, and even from that date the suit was time barred.

Section 6 of Act I of 1869 applies to mortgages executed on or after the 13th of February, 1844, and only to two classes of mortgages, viz. mortgages which fixed no term within which the property comprised might be redeemed, or mortgages which fixed the term within which the property comprised might be redeemed if such term had not expired before the 13th of February, 1856. *Raja and others v. Mahant Santram Das and another* (1), relied on.

Messrs. *Ali Zaheer and Habib Ali Khan*, for the appellants.

Messrs. *G. H. Thomas, K. D. Trivedi and B. K. Bhargava*, for the respondents.

STUART, C. J. and RAZA, J. :—This second appeal relates to a suit for redemption. The facts are these. It is admitted between the parties that a certain Thakur Kesri Singh, who is now represented by the plaintiffs-appellants, mortgaged to Thakur Sheo Bakhsh Singh, the Taluqdar of Katesar, through his *karinda* Jhao Lal the villages of Sultanpur and Akbarpur by two deeds executed on the 28th Muharram, 1262, Hijri, corresponding with the 27th of January, 1846. There is no dispute now as to the fact that these deeds were executed on that date and that both the villages in question were mortgaged. It is the property mortgaged by these deeds which the appellants now desire to redeem and their claim to redeem having been rejected by the courts below, they have come here in second appeal.

We have to look closely at the terms of these deeds. Under the terms of the deeds the mortgagor mortgaged

(1) (1915) 18 O.C., 95.

1929

RAGGU  
SINGH  
v.  
DEPUTY  
COMMISSIONER,  
SETAPUR.

Stuart, C.J.  
and Raza, J.

the villages without possession and agreed that if he did not pay the amount due by the end of Aghan 1255 Fasli, that is to say, in the year 1848 A. D., he would lose all his rights in the villages and that he would then hand over possession of the villages to the mortgagee. It is admitted before us that nothing was paid and that the villages were actually handed over to the mortgagee not in the year 1848, but in the year 1852, and the mortgagee has been in possession of these villages ever since. The suit was dismissed on the ground that it was barred by limitation and also under the principles of *res judicata*. We have first to consider what remedy the mortgagor had under the deeds? Until the annexation of Oudh in 1856 it must be held that his remedy would ordinarily be confined to the remedy given him under the terms of the deeds themselves, and if that view is taken, the suit clearly fails for under the terms of the deeds all his title to the property disappeared in 1848 as he had not by then paid up the amount due. But even if another view is taken and it is held that under the rule of the Kings of Oudh there was an equitable right to recover possession, this right would have commenced in the year 1852 when the mortgagee obtained possession. It is to be remembered that the British annexation took place on the 13th of February, 1856, and that from the time of the British annexation up to the disturbances of 1857, that is to say, for something over a year, there were British courts in existence. If he had an equitable right to redeem, he could have exercised that right at any time during that period. We have not been referred to any Act of the Legislature from the 13th of February, 1856, onwards which gave a right to redeem in the case of mortgages executed before the annexation, where under the terms of the mortgages themselves the right to redeem had ceased to exist. But if it be conceded that the equitable principle which permits redemption came into force to cover such cases, it must be taken to have come in

force as soon as the British Courts came into being in February, 1856. The reason why we take this view is as follows: The article of limitation that would cover this case is clearly article 148 of the first schedule of Act IX of 1908. The period is sixty years from the date when the right to redeem or to recover possession accrues. Strictly speaking the right to redeem under these mortgages accrued as soon as the mortgages were executed. The possession did not pass until after the right to redeem had disappeared, if the terms of the mortgages are taken strictly. But even putting the case for the appellants as high as it can be put, the right to recover possession may be said to have accrued at the latest in 1852 after the property had passed out of his hands. So the period of sixty years would have expired in 1912. This suit was instituted in January, 1928.

The learned counsel for the appellants has argued that owing to the action of the British Government the right to redeem disappeared on the 15th of March, 1858, when under the well-known proclamation of Lord Canning all rights in Oudh land were confiscated. He argued that under the proclamation of the 10th of October, 1859, the property in question was handed over with full proprietary title to the taluqdar, and that he had no right of redemption until Act I of 1869 was passed when under the provisions of section 6 his right to redeem was readmitted and safeguarded. He overlooks one important fact here. Section 6 applies to mortgages executed on or after the 13th of February, 1844. These mortgages were executed after the 13th of February, 1844. But the section applies only to two classes of mortgages. Mortgages which fixed no term within which the property comprised might be redeemed, or mortgages which fixed the term within which the property comprised might be redeemed if such term had not expired before the 13th of February, 1856. Now these mortgages did fix a term within which the property comprised in the mortgages

1929

---

RAGGHU  
SINGH  
v.  
DEPUTY  
COMMISSIONER,  
SHARADPUR.

*Stuart, C.J.  
and Raza, J.*

1929

RAGGHU  
SINGH  
D.  
DEPUTY  
COMMISS-  
SIONER,  
SITAPUR.

Stuart, C.J.  
and Raza, J.

might be redeemed, but that term had expired in 1848. We do not consider that this argument can be accepted. In any instance the appellants have to meet what appears to me to be an insuperable difficulty. If, to put it at the highest, their right to redeem had accrued in 1852 and it is granted that between 1858 and 1869 the right had disappeared and revived again in 1869, there is nothing in article 148 which justifies the tacking of the term of the extra ten years on to the sixty years period allowed, and even if it were tacked on, the suit would be time-barred, for it was not filed within seventy-one years. The suggestion of the learned counsel that it must be taken that his right to redeem or to recover possession accrued only in 1869 is one that we cannot accept. He had a right to redeem clearly from 1846. If he did not lose the right in 1848 and lost it for a period when it was revived again, it did not come into being for the first time in 1869. For these reasons we consider the appeal must fail and we need look only shortly at the other point.

It is established that in the year 1858 the predecessors of the present plaintiffs-appellants came into the settlement court to redeem this property under these deeds and their claim was rejected. The courts below decided that their right to redeem cannot now be raised under the principles of *res judicata*. The argument on behalf of the appellants is that in 1868 they had no right to redeem, though they acquired such right in 1869 and that the suit was rightly dismissed and that they were foolish ever to have brought it. There is support for the view that although they had no right to redeem in 1868 and had a right in 1869, the decision operates as *res judicata* against them. This principle was laid down by a Bench of the late Judicial Commissioner's Court in *Raja and others v. Mahant Santram Das and another* (1). But, as we consider that the case clearly fails upon the other point, we do not consider it necessary to discuss

(1) (1915) 18 O.C., '95.

the question as to whether the suit is or is not barred under the rule of *res judicata*. We accordingly dismiss this appeal with costs.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Mr. Justice Wazir Hasan.*

GAJADHAR (PLAINTIFF-APPELLANT) *v.* MUSAMMAT SUKHDEI (DEFENDANT-RESPONDENT).\*

1929

RAGHU  
SINGH  
v.  
DEPUTY  
COMMISSIONER,  
SITAPUR.

1929  
December,  
20.

*Hindu Re-marriage Act (XV of 1856)—Widow permitted by custom of her caste to re-marry—Re-marriage, if involves forfeiture of property inherited from her first husband.*

*Held* that the provisions of the Hindu Re-marriage Act (XV of 1856) are inapplicable in the case of a widow who is permitted by the custom of her caste to re-marry and such a widow does not by re-marrying forfeit the property inherited by her from her deceased husband. *Ram Lal v. Musammat Jwa'ia and others* (1), *Bhagwan Din and others v. Indrani, Musammat and others* (2), *Gajadhar and another v. Kaunsila* (3) and *Mula v. Partab* (4), relied on.

Mr. H. D. Chandra, for the appellant.

Mr. S. N. Srivastava, for the respondent.

HASAN, J. :—This is the plaintiff's appeal from the decree of the Subordinate Judge of Partabgarh, dated the 20th of July, 1929, reversing the decree of the Munsif of Kunda, dated the 3rd of December, 1928.

On the facts as now admitted the property in suit belonged to one Bachcha. On Bachcha's death which happened in or about 1910 his widow Musammat Sukhdei, the defendant, entered into the possession of her husband's estate in the character of a Hindu female. But Musammat Sukhdei re-married in June, 1922. Bachcha was an Ahir by caste and it has been found by

\*Second Civil Appeal No. 289 of 1929, against the decree of Pandit Gulab Singh Joshi, Subordinate Judge of Partabgarh, dated the 20th of July, 1929, reversing the decree of Babu Avadh Behari Lal, Munsif of Kunda at Partabgarh, dated the 3rd of December, 1928, decreeing the plaintiff's claim.

(1) (1928) I.L.R., 3 Lucknow, 610. (2) (1921) 24 O.C., 297.  
(3) (1908) I.L.R., 31 All., 161. (4) (1910) I.L.R., 32 All., 489.