

## APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Abdul Raouf.

SHAH NAWAZ (PLAINTIFF)—*Appellant*,

*versus*

SHEIKH AHMAD AND OTHERS (DEFENDANTS)—

*Respondents.*

Civil Appeal No. 2578 of 1916.

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June 4.

*Equity of redemption—entry in Revenue records more than 12 years old—whether sufficient for acquisition of title—adverse possession.*

In 1888, on the death of *Mussammat Bhuri*, the surviving widow of *Kasam Shah*, plaintiff succeeded in having his name entered in the Revenue records as owner of the land originally owned by *Kasam Shah* and mortgaged by *Mussammat Tajo*, one of his widows, in 1868 with possession to the defendants 1 to 3's predecessors. Plaintiff sued in 1911 for redemption of the mortgage and the question was whether he had acquired a title to the equity of redemption by reason of the entries in the Revenue records in his favour since 1868.

*Held*, that the plaintiff could not and did not acquire ownership of the equity of redemption by merely having an entry in his favour in the Revenue records.

*Kanwar Sen v. Darbari Lal* (1), followed.

*Kanhoo Lal v. Mussammat Manji Bibi* (2), and *Hubdar Khan v. Gagadhar Chaube* (3), distinguished.

The land in suit was mortgaged by *Mussammat Tajo*, one of the two widows of *Kasam Shah*, in 1868 to *Mehr Ilahi* and *Aziz-ul-Rahman*. Defendants 1 to 3 were the representatives of the mortgagees and defendant 4, *Mussammat Umri*, was the daughter of *Kasam Shah*. The plaintiff claimed redemption of the mortgage as a collateral of the mortgagor's husband (as adopted son of *Amir Shah*, one of the collaterals) and also on the ground that he had acquired the equity of the redemption by adverse possession, his name having been entered in the Revenue records in 1888 on the death of

(1) (1916) 34 Indian Cases 171.

(2) (1902) 6 Cal. W. N. 601.

(3) (1914) 25 Indian Cases 600.

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*Mussammat Bhuri*, the surviving widow of *Kasam Shah*. The suit was originally tried by the Sub-Judge who dismissed it on the ground that plaintiff had no *locus standi* to sue. On appeal to the Divisional Judge it was held that the plaintiff had a *prima facie* title, and was entitled to redeem. The suit was, therefore, remanded for trial on the merits. The defendants appealed to the Chief Court, and that Court held that the case could not be satisfactorily tried without impleading the other collaterals of *Kasam Shah*. Hence defendants 4 to 8 were made parties to the suit, and the case re-tried. Both the lower Courts dismissed the suit of the plaintiff, holding that he had failed to prove that he, as adopted son of *Amir Shah*, was a collateral heir of *Kasam Shah*, and that he had not gained a title to the equity of redemption by adverse possession; also that *Mussammat Umri*, defendant 4, as the daughter of *Kasam Shah*, was the real heir of *Kasam Shah*. An appeal was then preferred to the High Court

*Abdul Rashid*, for the appellant, contended that in 1888 when the equity of redemption of the land in suit was mutated in the name of the plaintiff, *Mussammat Umri*, defendant 1, objected to the mutation on the ground that she was entitled to succeed to the property of her father *Kasam Shah*. Her objections were overruled by the Revenue authorities. Two courses were then open to her, that is, either to prefer an appeal against the mutation order, or to bring a civil suit to establish her rights. She, however, did nothing. That consequently the plaintiff has been in adverse possession of the equity of redemption, ever since 1888, and *Mussammat Umri* has lost her rights if she had any by lapse of time, *Kanhoo Lal v. Mussammat Manki Bibi* (1), and *Hubdar Khan v. Gajadhar Chaube* (2).

*Fagir Chand* for the respondent, *Mussammat Umri*, contended that there could be no adverse possession of the equity of redemption by a mere entry in the Revenue records. He relied upon *Kanwar Sen v. Darbari Lal* (3).

*Abdul Rashid* replied.

(1) (1902) 6 Cal. W. N. 801.

(2) (1914) 25 Indian Cases 600.

(3) (1916) 34 Indian Cases 171.

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*Second appeal from the decree of W. de M. Malan, Esquire, District Judge, at Jullundur, dated the 16th May 1916, affirming that of Lala Sri Ram Poplai, Senior Subordinate Judge, Jullundur, dated the 30th August 1915, dismissing plaintiff's claim.*

The judgment of the Court was delivered by—

ABDUL RAOOF, J.—The facts giving rise to this appeal are simple and are fully stated in the judgment of the first Court. One *Mussammat Tajo*, wife of Kasam Shah, mortgaged the land in suit on the 11th of March 1868 to Mehr Ilahi and Aziz-ul-Rahman. The defendants 1 to 3 are the representatives of the mortgagees and the plaintiff Shah Nawaz, who claims to be a collateral of Kasam Shah, the husband of *Mussammat Tajo*, has brought this suit for the redemption of the mortgage. Defendant 4 *Mussammat Umri* is the daughter of Kasam Shah by another wife, *Mussammat Bhuri*. Defendants 5 to 8 are said to be among the collaterals of Kasam Shah. *Mussammat Umri* and the latter defendants 5 to 8 were not originally made party to the suit, but the matter having come up to the Chief Court at a previous stage the case was remanded for trial on the merits with the direction that the suit should be tried after impleading *Mussammat Umri* and defendants 5 to 8 as defendants in the case. The case has now been tried with the result that the suit has been dismissed by both the Courts below. The plaintiff has preferred this second appeal to this Court.

The plaintiff claimed to be the adopted son of Amir Shah and a collateral of Kasam Shah, the husband of *Mussammat Tajo*, and as such entitled to claim redemption. He also claimed to have acquired ownership of the equity of redemption by adverse possession against *Mussammat Umri* on the ground that his name was mutated in the year 1888 on the death of *Mussammat Bhuri*, the second wife of Kasam Shah. Both these points have been decided against the plaintiff.

In the memorandum of appeal although exception is taken to the decision of the lower Appellate Court

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on both these points yet the question of adverse possession only has been pressed before us. It has been contended that according to the authorities it is possible to acquire ownership of the right of redemption by adverse possession. In support of this contention reliance has been placed on the case of *Kanhoo Lal v. Mussammat Manki Bibi* (1). On the facts of that case it was held that the equity of redemption claimed by the plaintiff was extinguished by adverse possession, inasmuch as the person claiming adverse possession had been receiving rent from the mortgagee as owner. In the present case beyond the fact that the name of the plaintiff was entered in the revenue register no manner of possession whether actual or constructive has been established by him. One mode of acquiring and keeping possession is by receipt of rent. In the Calcutta case possession was acquired and retained by receipt of rent. The ruling is therefore clearly distinguishable and cannot help the case of the plaintiff. Reliance was also placed on the case of *Hubdar Khan v. Gajodhar Chaube* (2), Judicial Commissioner's Court, Oudh. In that case the right of ownership was exercised by effecting a transfer of the equity of redemption and it was held under the special circumstances of the case that the claimant had acquired full ownership of the equity of redemption by adverse possession. This was a decision by a single Judge and the facts were quite different from those of the present case. There is, however, a decision of the Allahabad High Court which fully applies to the present case (see *Kanwar Sen v. Darbari Lal* (3)). On facts almost similar to the facts of the present case it was held that a person cannot be said to be in adverse possession of the right to redeem immoveable property where the right to possession and actual possession is all the time in the hands of the mortgagee. The fact that he succeeds in getting his name recorded in the revenue register does not confer a title on him. The decision in *Kanhoo Lal v. Mussammat Manki Bibi* (1) above referred to was relied upon in that case also and the learned Judges made

(1) (1902) 6 Cal. W. N. 601.

(2) (1914) 25 Indian Cases 600.

(3) (1916) 34 Indian Cases 171.

the following observation about it in their judgment :—

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“ This case no doubt is to some extent in favour of the plaintiff. A number of authorities were referred to including the case of *Casborne v. Scarfe* (1) and the judgment of Lord Hardwicke is quoted. Lord Hardwicke no doubt pointed out in that case that an equitable estate might be barred by time just as much as a legal estate, and then he refers to and describes an equity of redemption. It must be borne in mind, however, that the equity of redemption where the possession remains with the mortgagor is quite different from the equity of redemption where the possession is with the mortgagee. There can be no doubt that an equitable estate as distinguished from a legal estate can be barred by time but it seems to us impossible that any person can be in possession of the right to redeem a mortgage where under the terms of the mortgage the mortgagee is entitled to the actual possession and is in fact in possession thereunder.”

We entirely agree with the learned Judges of the Allahabad High Court and hold that the plaintiff could not and did not acquire ownership of the equity of redemption by merely having his name entered in the revenue register. In our opinion the view taken by the Court below was correct and we accordingly dismiss the appeal with costs.

*Appeal dismissed.*