

APPELLATE CIVIL.

Before Mr. Justice Abdul Raof and Mr. Justice Moti Sagar.

HUKAM CHAND (PLAINTIFF)—Appellant,

versus

SHAHAB DIN AND OTHERS (DEFENDANTS)—

Respondents.

Civil Appeal No. 1917 of 1919.

*Indian Limitation Act, IX of 1908, section 9 and article 135—
Suit by mortgagee for possession of mortgaged property—Limitation—whether subsequent disability can save limitation after it has begun to run—and whether any deduction of time is admissible apart from the provisions of the Limitation Act.*

In 1894, U. D. mortgaged the land in dispute to L. D. for Rs. 820, out of which Rs. 320 were paid to the mortgagor, and Rs. 500 were left with the mortgagee to be paid to a previous mortgagee, M. L. The mortgage in favour of M. L. was dated 2nd October 1890, and was a simple mortgage without possession. There was a clause in this mortgage entitling the mortgagee to claim possession in the event of a default of any of the instalments fixed in the deed. L. D. did not pay Rs. 500 to M. L. In 1903 M. L. sued U. D. and B. R., son of L. D., for possession, and succeeded in getting possession of the land in suit. He remained in possession till 1917, when the heirs of U. D. redeemed the property and took possession. Thereupon B. R. instituted the present suit for possession as mortgagee on payment of Rs. 500.

Held, that the suit was barred by limitation under article 135 of the Indian Limitation Act. U. D., the mortgagor, was in possession of the property at the date of the mortgage, and L. D. could at once have sued for possession. As under the mortgage deed the plaintiff was entitled to immediate possession, and the time had begun to run from the date of the mortgage, no subsequent disability or inability to sue could stop it, *vide* section 9 of the Indian Limitation Act.

Held further, that there can be no saving of limitation apart from the provisions of the Limitation Act, and therefore the plaintiff was not entitled to a deduction of the period during which M. L., the previous mortgagee, had remained in possession.

Muthu Korakkai Chetty v. Madar Ammal (1), followed.

Second appeal from the decree of Lieut.-Col. B. O. Roe, District Judge, Jullundur, dated the 2nd May 1919, affirming that of Lala Devi Das, Munsif, 1st Class, Jullundur, dated the 19th December 1918, and dismissing the claim.

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MEHR CHAND, MAHAJAN, for JAGAN NATH, for Appellant.

FAKIR CHAND, for Respondents.

The judgment of the Court was delivered by—

ABDUL RAOOF J.—The facts giving rise to this second appeal are few and simple and may be summarised as below :—

On the 17th February 1894 Umar Din mortgaged the land in dispute with possession to one Lachhman Das for Rs. 820, out of which Rs. 320 were paid to the mortgagor and Rs. 500 were left with the mortgagee to be paid to a previous mortgagee, Mohan Lal. The mortgage in favour of Mohan Lal was dated the 2nd October 1890 and was a simple mortgage without possession. There was a clause in this mortgage entitling the mortgagee to claim possession in the event of a default in payment of any of the instalments fixed in the deed. Lachhman Das did not pay Rs. 500 to Mohan Lal which led to a suit for possession by him in 1903 against Umar Din and Beli Ram, son of Lachhman Das, who had died in the meantime. A decree for possession was passed in the suit on the 21st May 1903, and Mohan Lal succeeded in getting possession of the land in execution of this decree. He remained in possession till 1917 when the heirs of Umar Din paid off his mortgage, redeemed the property and took possession. Thereupon the present suit was instituted on the 21st February 1918 by Beli Ram for possession as mortgagee on payment of Rs. 500. The suit was resisted on the plea of limitation. Both the Courts below holding that article 135 of the Indian Limitation Act was applicable, dismissed the suit. Hence this second appeal.

Mr. Mehr Chand, *Mahajan*, holding the brief of Mr. Jagan Nath, has put forward two contentions before us in support of the appeal, namely :—

(1) That the mortgagor Umar Din has been allowed to retain possession of the mortgaged property

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under a lease executed on the date of the mortgage. This allegation is not supported by any evidence. A copy of the lease was produced in the Courts below, but it was not in favour of the mortgagor, and moreover as the loss of the original lease has not been proved the copy could not be accepted in evidence. This contention, therefore, must be disallowed.

(2) That inasmuch as there was a clause in Mohan Lal's mortgage deed entitling him to take possession under the contingency mentioned in his previous mortgage deed it was not possible for Lachhman Das or his heirs to sue for possession. This contention also cannot prevail, because the mortgagor Umar Din was admittedly in possession of the mortgaged property at the time the mortgage deed was executed, the mortgagor's right to possession had determined on that date and Lachhman Das could at once have sued for possession. As under the deed the plaintiff was entitled to immediate possession and the time had begun to run from the date of the mortgage no subsequent disability or inability to sue could stop it, see section 9 of the Indian Limitation Act.

Mr. Mehr Chand, *Mahajan*, however, has argued that his client was entitled to a deduction of the period during which Mohan Lal had remained in possession. There is no warrant for such plea in the Limitation Act. No suspension or extension of limitation is allowable unless it is provided in the Limitation Act. In the case of *Muthu Korakkai Chetty v. Madar Ammal* (1), Seshagiri Ayyar, J., is reported to have made the following observation :—

“ The Judicial Committee have laid down that there can be no saving of limitation apart from the provisions of the Limitation Act. The Judicial Committee have drawn attention to sections 9 and 14 of the Act, and have held that exemptions not covered by these and the other sections should not be imported by Courts to relieve a party from the bar of limitation.”

There can be no doubt that this is the law, and in the face of it the contention put forward cannot prevail.

The appeal fails and we accordingly dismiss it with costs.

A. R.

Appeal dismissed.

(1) (1919) I. L. R. 43 Mad. 185 (F. B.).