

## APPELLATE CIVIL.

*Before Addison J.*

BHAGWAN DAS (PLAINTIFF) Appellant

*versus*SAID MOHAMMAD AND ANOTHER (DEFENDANTS)  
Respondents.

1933

Jan. 16.

Civil Appeal No. 1145 of 1932.

*Indian Limitation Act, IX of 1908, Article 148: Suit for redemption—Limitation—attestation at Settlement of entry describing defendants as mortgagees—whether amounts to acknowledgment of mortgagor's right to redeem.*

*Held*, that where the defendants' *Mukhtar* attested as correct the record of rights prepared at the 1872 settlement in which they were described as mortgagees of the property in suit, it amounted to an acknowledgment of the mortgagor's 'right to redeem' and limitation under Article 148 of the Limitation Act would extend to 60 years from the date of the attestation.

*Daia Chand v. Sharfraz* (1), *Anup Singh v. Fateh Chand* (2), and *Gul Mohammad v. Akbar* (3), relied upon.

*Second Appeal from the preliminary decree of Mr. J. K. Tapp, District Judge, Montgomery at Lahore, dated the 15th April, 1932, reversing that of Lala Tirath Das, Subordinate Judge, 4th Class, Pakpattan, dated the 3rd August, 1931, and dismissing the plaintiff's suit.*

ACHHRU RAM, for Appellant.

JAGAN NATH AGGARWAL and ASA RAM AGGARWAL, for Respondents.

ADDISON J.—The facts leading up to this second appeal so far as they need be stated are as follows:—

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In 1856 the predecessors-in-title of Sardar Khan, defendant, mortgaged their  $\frac{1}{4}$ th share in a certain

(1) (1876) I. L. R. 1 All. 117 (F.B.). (2) (1920) I. L. R. 42 All. 575 (F.B.).

(3) 145 P. R. 1889.

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*khata* with *Diwan* Allah Jawaya, the predecessor-in-title of the other defendant *Diwan* Said Mohammad, the consideration for the mortgage being Rs. 13-14-0. In the settlement record of 1872 the  $\frac{1}{4}$ th share of Jalal Din, father of Sardar Khan, defendant, is still shown as under mortgage with *Diwan* Allah Jawaya for the same consideration. In September, 1929, Jalal Din effected a second mortgage of this land and other land in favour of Dogar Mal who sold his rights to Bhagwan Das, plaintiff-appellant. Bhagwan Das thereupon sued for redemption on payment of Rs. 13-14-0. He was successful in the trial Court in obtaining the usual preliminary decree, but his suit was dismissed on appeal by the learned District Judge of Montgomery on the ground that it was barred by time. Against this decision Bhagwan Das has preferred this second appeal.

The only question is that of limitation. The mortgage was more than 60 years old when the suit was brought, and it has to be decided whether it was still subsisting then by virtue of an acknowledgment contained in the settlement record of 1872, which was signed by the recognised agent of the mortgagee. The learned District Judge has held that there was no acknowledgment of liability. Usually this would be a finding of fact, but in the present case the learned District Judge failed to notice a third attestation in the *Naql Intiqal Muntakhib Ma' Khawat Mashmula Bandobast* 1872. This entry shows Jalal Din as owner of a  $\frac{1}{4}$ th share and it shows this  $\frac{1}{4}$ th share as under mortgage with *Diwan* Allah Jawaya, who was also *Muafidar*, for a sum of Rs. 13-14-0. I do not think it necessary to discuss the attestations which have been held by the District Judge not to amount to acknowledgments of liability. But there is a third

attestation against this entry in the following terms:—" We the owners and Farid Bakhsh, *Mukhtar* of the *Muafidar*, who have signed underneath, hereby attest that the numbers of fields, the description of the soil, number of trees, instalments to be paid, the rate of the *batai* payable by the tenant to the *Muafidar*, the dues payable by the proprietors to the *Muafidar*, and all the other entries in this *khata* have been read out to us, been understood by us and are admitted to be correct." This entry is signed by Farid Bakhsh, who has been held as a fact to be the *Mukhtar* of the *Muafidar* *Diwan* Allah Jawaya who was also the mortgagee named. It is also signed by the owners, though this does not matter. The last portion of the above entry to the effect that " all the other entries in this *khata* have been read out to us, been understood by us and are admitted to be correct " obviously amounts to a signed acknowledgment of the right to redeem the mortgage, which was then subsisting.

It is not necessary to discuss the rulings in this connection at any length as I am accepting this appeal on the ground that the learned District Judge has failed to notice this third attestation which clearly amounts to a signed acknowledgment of liability. The first case which may be cited is *Daia Chand v. Sharfraz* (1), where the defendants attested as correct the record of rights prepared at a settlement of an estate in which they were described as mortgagees of the estate but which did not mention the name of the mortgagor. It was held that this was an acknowledgment of the mortgagor's right to redeem within the meaning of Article 148 of the Limitation Act. An

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other Full Bench decision of the Allahabad Court on this question is reported in *Anup Singh v. Fateh Chand* (1). In this case there was a similar acknowledgment in the settlement records. There was no evidence from which the date of the mortgage could be inferred with any certainty, and it was held by a majority of the Full Bench "that no substantial inference could be drawn from the acknowledgment in question that the mortgage was at the time of the acknowledgment a subsisting mortgage not barred by limitation, and it was on the plaintiff relying on the acknowledgment to show that it was made before the period of limitation had expired." This consideration, however, does not enter into the case before me, as the date of the mortgage is known to be 1856, and the acknowledgment in the *Muntakhib Mae Khewat* was made on the 14th June, 1873, that is within 60 years.

The decision of the Punjab Chief Court in *Gul Mohammad v. Akbar* (2), is also in point, though not quite as strong a case as the present one.

For the reasons given I accept the appeal with costs of this Court to be recovered from the mortgagee, set aside the decree of the District Judge and restore that of the trial Court. If the sum of Rs. 13-14-0 declared to be due has not been paid into Court, the plaintiff can do so within two months from to-day. In all other respects the preliminary decree of the trial Court is restored, except that parties will bear their own costs in the lower Courts.

A. N. C.

*Appeal accepted.*

(1) (1920) I. L. R. 42 All. 575 (F.B.).

(2) 145 P. R. 1889.