

## APPELLATE CIVIL.

*Before Tek Chand and Abdul Rashid JJ.*

GOBIND SINGH AND ANOTHER (DEFENDANTS)

Appellants

*versus*

PUNJAB NATIONAL BANK, LTD., SHEIKHUPURA (PLAINTIFF); AND ANANT RAM (DEFENDANT) Respondents.

Civil Appeal No. 1767 of 1933.

*Mortgage—Suit by mortgagee on simple mortgage to realize amount due — Jurisdiction of Court — to appoint a Receiver to take possession and realize the income pending disposal of suit—Civil Procedure Code, Act V of 1908, Order XL, rule 1.*

*Held*, that in a suit by a mortgagee to realize the amount due to him on foot of a simple mortgage the Court has jurisdiction to take the mortgaged property in *custodia legis* by the appointment of a Receiver to take possession of the mortgaged property and collect the rents and profits pending the disposal of the suit.

*Paras Ram v. Puran Mal-Ditta Mal* (1), followed.

*Girdhari Lal v. Pars Ram* (2), distinguished.

Case Law discussed.

*Miscellaneous First Appeal from the order of Sheikh Mohammad Akbar, Senior Subordinate Judge, Sheikhpura, dated 23rd October, 1933, appointing a Receiver of the property in dispute.*

R. C. SONI, for Appellants.

HAR GOPAL, for (Plaintiff) Respondent.

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TEK CHAND J.—This is a defendants' appeal from the order of the Senior Subordinate Judge, Sheikhpura, dated the 23rd of October, 1933, appointing an *interim* receiver in a suit brought by the

plaintiff-respondent against them for recovery of the amount due on foot of two "simple" mortgages. It was alleged that interest on one of the mortgages had been in arrears since 1928, and that on the other mortgage had not been paid at all, that the value of the mortgaged property had considerably diminished owing to the general fall in prices and it was likely to prove insufficient to pay off the mortgage debt which amounted to more than Rs.77,000, and that the defendants were purposely delaying the decision of the suit. It was accordingly prayed that in order to prevent further loss to the plaintiff, a receiver be appointed to realize the rents and profits during the pendency of the suit. The learned Subordinate Judge, finding that the facts were as alleged by the plaintiff, has granted the application and appointed an *interim* receiver.

On appeal, the only point raised is that in a suit by a mortgagee to realize the amount due to him on foot of a simple mortgage, the Court has no jurisdiction to appoint a receiver to take possession of the mortgaged property for the benefit of the mortgagee. The case was heard by Jai Lal J. sitting in Single Bench, and before him reliance was placed on a judgment of Broadway J. reported as *Girdhari Lal v. Pars Ram* (1) which is in conflict with an earlier decision of Moti Sagar J. in *Paras Ram v. Puran Mal-Ditta Mal* (2). In view of this divergence of opinion, the learned Judge has referred the case to a Division Bench for an authoritative decision on the question of law involved.

After hearing counsel at length and examining the authorities, I am of opinion that the law was correctly laid down in *Paras Ram v. Puran Mal-Ditta*

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(1) (1933) I. L. R. 14 Lah. 457.

(2) 1925 A. I. R. (Lah.) 590.

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*Mal* (1), and that the appellants' contention must be overruled. It is conceded that Order XL, rule 1, Civil Procedure Code, is very wide in its terms, and authorises the Court to appoint a receiver where it appears to it to be "just and convenient" to do so. Its operation is not limited to any particular kind of suits, and the Court is empowered to appoint a receiver of "any property," "whether before or after decree." It is, however, contended that the procedure for suits on mortgages is laid down in Order XXXIV of the Code of Civil Procedure and that Order is self-contained and excludes the applicability of Order XL and other similar provisions to such suits. I can find no warrant for this contention in Order XXXIV or any other provision of the law. Indeed, it is admitted by the learned counsel for the appellants that his argument does not apply to suits for redemption or suits based on "equitable" mortgages which, he concedes, are brought under Order XXXIV and in which the Courts may, in appropriate cases, appoint a receiver under Order XL or issue an injunction under Order XXXIX. This would show that Order XXXIV is not exhaustive on all points.

It is next pointed out that in a simple mortgage, the mortgagee is not entitled to possession of the mortgaged property, or to obtain personal relief against the mortgagor, at least at that stage, his only remedy being to bring the mortgaged property to sale. It is, therefore, argued that the appointment of an *interim* receiver would put the mortgagee in a much better position, for it would have the effect of virtually dispossessing the mortgagor during the currency of the mortgage and making him give up the rents and profits to the mortgagee, to which the latter is not

entitled under the terms of his contract. In my opinion this argument is fallacious. It is quite true, that the only remedy, which a simple mortgagee has to realize his security, is by a judicial sale of the mortgaged property. But it is for securing that very relief that he has brought the suit, and the Court has to see that the property is kept intact *pendente lite*. If it finds that the suit cannot be decided without delay, or the sale cannot be effected at once, though the plaintiff has a *prima facie* case, it is not only empowered, but is bound, to see that further loss is not caused to the plaintiff by the defendant appropriating the rents and profits, or otherwise wasting the property during the pendency of the suit. In such cases, the Court may take the mortgaged property in *custodia legis* by the appointment of a receiver if it finds that this course is "just and convenient." In doing so, the Court is not going beyond the terms of the contract between the parties or infringing any express or implied statutory provision. The object of the appointment of the receiver in such cases is to protect the property and maintain the *status quo ante* pending the disposal of the dispute, and it is not an indispensable pre-requisite for taking action under Order XL, rule 1, that the plaintiff should be entitled to immediate possession of the property. See, *inter alia*, *Amarnath v. Tehal Kaur* (1).

In the Punjab, the prevailing view has been that in a suit to enforce a simple mortgage, the Court undoubtedly has jurisdiction to appoint a receiver, and it has been so laid down in a long series of cases See *Paras Ram v. Puran Mal-Ditta Mal* (2) (Moti Sagar J.), *Dhian Singh v. Har Narain* (3) (Jai Lal

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(1) (1922) 67 I. C. 383. (2) 1925 A. I. R. (Lah.) 590.

(3) 1929 A. I. R. (Lah.) 780.

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J.), *Jaswant Singh v. Punjab National Bank, Ltd.* (1) (Johnstone J.), *Asa Ram v. Charanji Lal* (2) (Dalip Singh J.), *Sita Ram v. Beni Parshad* (3) (Tek Chand J.) and Civil Appeal No. 139 of 1934 (*Sital Das v. The Punjab and Sind Bank*, decided on the 1st of March, 1934). The facts of the case decided by Broadway J. in *Girdhari Lal v. Pars Ram* (4) were very peculiar. There the application for appointment of a receiver was made after the final decree had been passed, and the executing Court, instead of proceeding to sell the property itself, had appointed a receiver to carry out the sale. At that stage all points in controversy between the parties had been settled, and the only thing that remained to be done was to sell the property. The learned Judge held, and if I may say so with all respect, rightly that the appointment of a receiver in such circumstances was improper, as its only effect was to increase the cost of conducting the sale. A perusal of the judgment shows, however, that the learned Judge was inclined to accept, in preference to the decision of Moti Sagar J. in *Paras Ram v. Puran Mal-Ditta Mal* (5), the contrary view taken by the Allahabad High Court in *Gnanada Sundari Mojumdar v. Chandra Kumar De* (6) and *Makhan Lal v. Mushtaq Ali* (7), that Order XXXIV was brought into the Code with a view to dealing with mortgage suits and decrees, and that it was meant to be self-contained and therefore it excluded the applicability of Order XL to such suits. The decision of the case, however, proceeded mainly on its peculiar facts and the attention of the learned Judge does not appear to have been drawn to the other decisions of this Court and other High

(1) 1932 A. I. R. (Lah.) 82. (4) (1933) I. L. R. 14 Lah. 457.

(2) 1934 A. I. R. (Lah.) 38. (5) 1925 A. I. R. (Lah.) 590.

(3) 1932 Indian Rulings 658. (6) (1927) 100 I. C. 735.

(7) 1927 A. I. R. 13 (All.) 419.

Courts, in which the question had been considered more fully.

There is no doubt that the consensus of authority in the other Courts in India is decidedly in favour of the view taken by this Court in the cases cited above. The most recent case, in which the question has been considered at great length is *Paramasivan Pillai v. Ramasami Chettiar* (1) where a Full Bench of the Madras High Court held that in the suit of a simple mortgagee where no personal relief subsists against the mortgagor and his properties, the Court has jurisdiction to order the appointment of a receiver. The learned Judges, definitely dissented from the decision of the Allahabad Court, on which the observations of Broadway J., cited above, were based, and they approved the contrary view expressed by Kumaraswami Sastri J. of their own Court in *Ethirajulu Chetti v. Rajgopalachariyar* (2), in which the case-law had been reviewed at great length.

The Calcutta High Court has consistently maintained that it is competent to a Court to appoint an *interim* receiver in suits on simple mortgages, where the interests of justice demand that such order should be passed. See *Ghanisham Misser v. Gobinda Moni Dasi* (3), *Weatherall v. Eastern Mortgage and Agency Co., Ltd.* (4), *Rameshwar Singh v. Chuni Lal Shaha* (5) and *Kshitish Chandra Acharya Chaudhry v. Raja Janki Nath Roy* (6). The same has been held by the Bombay High Court, in *Jaikissondas Gangadas v. Zenabai & Kazi Mohamed Miya Dada Miya* (7), and also in *Burma Khocjoo Tha v. Ma*

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- (1) (1933) I. L. R. 56 Mad. 915 (F.B.). (4) (1911) 13 Cal. L. J. 495.  
 (2) (1929) I. L. R. 52 Mad. 979. (5) (1919) I. L. R. 47 Cal. 418, 424.  
 (3) (1902) 7 Cal. W. N. 452. (6) 1932 A. I. R. (Cal.) 194.  
 (7) (1890) I. L. R., 14 Bom. 431.

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*Sein* (1) and *Sind Punjab National Bank, Karachi v. Moosaji Jafferji* (2). Recently, the Allahabad High Court also has held such an appointment to be valid in *Mahammad Ishaq v. Om Prakash* (3), though it may be stated that the judgment in that case contains no reference to the earlier decisions of that Court in *Gobind Ram v. Jwala Pershad* (4) and *Makhan Lal v. Mushtaq Ali* (5), where the contrary view had been expressed. The only other case which supports the contention of the appellants is *Nrisingha Charan v. Rajniti* (6), but if I may say with great respect, the reasoning of the learned Chief Justice is based on certain assumptions which, as has been pointed out by the Full Bench of the Madras High Court in *Paramasivan Pillai v. Ramasami Chettiar* (7), cannot be sustained.

After careful consideration I am of opinion that in a suit on a simple mortgage the Court has jurisdiction to appoint a receiver to take possession of the mortgaged property and collect the rents and profits pending the disposal of the dispute. Whether in a particular case the appointment should or should not be made will, of course, depend on its own peculiar facts and circumstances. On this point it is not possible to lay down a hard and fast rule, it may be stated, however, that in suits on simple mortgages, the Courts will not ordinarily deprive the mortgagor of possession. But where there has been serious default in the payment of interest and the value of the mortgaged property has diminished, or the Court is otherwise satisfied that the interests of justice so demand, it will not hesitate to remove the mortgagor from possession.

(1) (1928) I. L. R. 6 Rang. 261.

(2) (1927) 102 I. C. 353.

(3) 1933 A. I. R. (All.) 227.

(4) (1918) 43 I. C. 533.

(5) 1927 A. I. R. (All.) 419.

(6) 1932 A. I. R. (Pat.) 360.

(7) (1933) I. L. R. 56 Mad. 915, 926, 946 (F.B.).

In the present case the learned counsel for the appellants confined his arguments to the question of jurisdiction only and did not urge anything against the propriety of the order of the lower Court.

For the foregoing reasons, I would affirm the order of the lower Court and dismiss this appeal with costs.

ABDUL RASHID J.—I agree.

A. N. C.

*Appeal dismissed.*

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**APPELLATE CIVIL.**

*Before Addison and Beckett JJ.*

THAKAR SINGH (PLAINTIFF) Appellant

*versus*

BUTA SINGH AND OTHERS (DEFENDANTS)

Respondents.

**Civil Appeal No 2033 of 1928**

*Custom—Succession—Rule of Reversion of gifted property—when applicable.*

The land in suit was the self-acquired property of N. who died and was succeeded by J. his widow. J. gifted the land to T. wife of the appellant and daughter of the brother of N., the next reversioner consenting to the gift. On the death of T. without issue, the land was mutated in favour of J. who also died and was succeeded by her husband's reversioners. T. S. the husband of T. brought the present suit on the grounds that the gift to her was an absolute one, that the property was self-acquired and did not revert on his wife's death without issue to the donor's family, but that he was entitled to succeed to it as his wife's heir.

*Held*, that the principle of reversion is, that in case of a gift made to one of the members of the donor's family such gift enures for the benefit of the donee and his issue, but the property reverts to the donor's heirs when there is a failure of such issue.

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