

APPELLATE CIVIL.

Before Bhide J.

NANAK CHAND AND OTHERS (PLAINTIFFS)

Appellants,

versus

MST. SULHAN (DEFENDANT) Respondent.

Regular Second Appeal No. 273 of 1937.

Redemption of Mortgages Act (II of 1913), SS. 4, 12 — Application for redemption of mortgage to Collector made within time — but deposit of sum due under the mortgage made after the expiry of period of limitation within which redemption could be allowed — mortgage whether redeemable.

Land in Laswala well had been mortgaged by a mortgage deed, dated 25th June, 1875. An additional charge was created on the said land as well as on other land on 9th December, 1915. The application for redemption was presented to the Collector on 4th June, 1935, but the sum due on the mortgage was not deposited till 6th August, 1935.

Held, that the provisions of section 4 of the Redemption of Mortgages Act are mandatory and as the deposit which is required to be made along with the petition under the section was not made till after the expiry of limitation, the redemption of the aforesaid land could not be allowed.

Held also, that the inherent powers of a Court for extending limitation could not be invoked in breach of the clear provisions of the section.

Bissa Mal v. Kesar Singh (1), and *Kundan Lal-Mukand Lal v. Kanshi Ram* (2), relid upon.

Second appeal from the decree of Mr. T. D. Bedi, District Judge, Jhang at Sargodha, dated 30th November, 1936, reversing that of Mian Wahid Ali, Subordinate Judge, 1st Class, Jhang, dated 31st August, 1936, and granting the plaintiffs the declaration prayed for.

(1) I. L. R. (1920) 1 Lah. 363.

(2) 1926 A. I. R. (Lah.) 135.

C. L. AGGARWAL and AMOLAK RAM KAPUR, for
Appellants.

SHUJA-UD-DIN, for Respondent.

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BHIDE J.—This appeal arises out of a suit by mortgagees under section 12 of the Redemption of Mortgages Act. The respondent *Mussammât* Sulhan instituted proceedings under that Act for redemption of certain land which had been mortgaged at different times in favour of the mortgagees as follows:—

(1) Land in Laswala well for Rs.200 by a deed, dated 25th June, 1875;

(2) Lands on Waliana and Tahliwala wells mortgaged for Rs.98 by a deed, dated 12th September, 1886;

(3) Lands on Waliana and Tahliwala wells mortgaged for Rs.98 by a deed, dated 12th September, 1886;

(4) Land on Tahliwala well mortgaged for Rs.99 by a deed, dated 30th May, 1891.

On the 9th of December, 1915, an additional charge of Rs.550 was created on the aforesaid lands and the charge was distributed on the different wells as specified in the deed. It was stipulated in the deed that the mortgagor would be entitled to redeem the land on any of the wells separately. The Assistant Collector allowed redemption of all the lands on payment of Rs.798. Being dissatisfied with this order the mortgagees instituted a suit for a declaration (1) that the mortgages were not liable to be redeemed as they had become barred by time and (2) that in any case the mortgage charge was Rs.896 and not Rs.798.

The trial Court dismissed the suit. On appeal the learned District Judge held that the mortgage charge amounted to Rs.896 and granted a decree to that effect. From this decision a second appeal has been preferred by the mortgagees.

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The only point that was argued before me was that the mortgage in respect of the lands on Laswala well had become barred by time. The application for redemption was presented to the Collector on the 4th of June, 1935, but the sum due on the mortgage was not deposited till the 6th of August, 1935. The mortgage with respect to the Laswala well being dated 25th of June, 1875, the period of limitation for redemption of that land expired on the 25th of June, 1935. It was, therefore, contended that as the deposit which is required to be made along with the application, according to the provisions of section 4 of the Redemption of Mortgages Act, was not made till after the expiry of the period of limitation redemption of the aforesaid land could not be allowed. The learned District Judge has held that the Assistant Collector had power to grant extension of time for the purpose but it was urged on behalf of the appellants that inherent powers could not be invoked for extending limitation. In support of this argument reliance was placed on *Bissa Mal v. Kesar Singh* (1) and *Kundan Lal-Mukandi Lal v. Kanshi Ram* (2). On behalf of the respondent it was urged that there is no provision in the Redemption of Mortgages Act, to the effect that redemption cannot be allowed if the deposit is not made along with the application as required by section 4 of the Redemption of Mortgages Act. But the provisions of that section appear to be mandatory inasmuch as it is laid down therein that "the petitioner shall at the same time deposit such sum with the Collector." The section itself requires the application for redemption to be made before a suit for redemption becomes barred. It is, therefore, clear that according

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(2) 1926 A. I. R. (Lah.) 135.

to the plain construction of the section the deposit must be made at least before a suit for redemption is barred by time. This appears to be in consonance with the ordinarily law governing redemption of mortgages, because according to that law it is necessary for a person desiring to redeem his land to tender the mortgage charge before the expiry of the period of limitation (*cf.* section 60 of the Transfer of Property Act). The Redemption of Mortgages Act only gives facilities for redemption being effected through the agency of the Collector. In the present instance there is no doubt that the respondent did not pay even the mortgage amount, which, according to her own petition was due, till the 6th of August, 1935—that is till more than a month after the expiry of the period of limitation. It appears further from the record that she had to ask for two or three adjournments for the purpose and that she was not in a position to pay the money till the 6th of August, 1935. There was, therefore, no compliance with the provisions of section 4 of the Act till the latter date. Consequently it seems to me that the mortgage in respect of the lands on Laswala well, which was dated 25th June, 1875, was no longer liable to be redeemed.

I accept the appeal and modify the decree of the learned District Judge to the extent of excluding the Laswala well land from its scope. The mortgage charge on the Laswala well effected in 1875 and in 1915 was Rs.400. The respondent will, therefore, be entitled to redeem the rest of the land on payment of Rs.496. The appellants will get half the costs throughout.

A. N. C.

Appeal accepted in part.

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