

LETTERS PATENT APPEAL

Before D. Falshaw and Tek Chand, JJ.

HARGURDIAL SINGH,—Appellant.

versus

DES RAJ AND OTHERS,—Respondents.

Letters Patent Appeal No. 14 of 1959.

1961
August, 28th

Limitation Act (IX of 1908)—Article 132—Term of mortgage providing payment of interest for a whole year—Suit to enforce mortgage by mortgagee—Terminus a quo for—Whether the date of mortgage or a year thereafter.

Held, that the mortgage money does not become due within the meaning of Article 132 of the Limitation Act, until both the mortgagor's right to redeem and the mortgagee's right to enforce his security have accrued. Where the terms of a mortgage provide that interest will be paid for a whole year, the mortgagor cannot redeem the mortgage until at least one full year's interest was due nor can the mortgagee sue for the enforcement of the mortgage before the expiry of one year, as the intention of the parties in such a case is that the mortgage is to subsist for at least one year before either any right of enforcement or redemption accrues. The *terminus a quo* for a suit to enforce such a mortgage is the date one year after the date of the mortgage.

Des Raj and others v. Hargurdial Singh and others (1), reversed.

Appeal under clause 10, of the Letters Patent, from the decree of the Hon'ble Mr. Justice, Mehar Singh, dated the 23rd September, 1958, in R.S.A. No. 237 of 1954, reversing that of Shri J. N. Kapur, District Judge, Hoshiarpur, dated the 30th November, 1953, by which the decree of Shri Mohinder Singh, Senior Sub-Judge, Hoshiarpur, dated the 27th January, 1953, was modified to the extent of increasing the decretal amount from Rs. 4,000 to Rs. 4,581 only by partly accepting the cross-objections filed by the

(1) (1959) 61 P.L.R. 213.

plaintiff and dismissing the appeal filed by defendants Nos. 1 and 4, with costs and further directing that the decree of the Senior Sub-Judge, would be deemed to be decreed for Rs. 4,581, and proportionate costs.

A.C. HOSHIARPURI, ADVOCATE for the Appellant.

J. N. SETH, ADVOCATE, for the Respondent.

JUDGMENT

FALSHAW, J.—This is an appeal under clause 10 of the Letters Patent by a plaintiff Hargurdial Singh against the order of a learned Single Judge in second appeal setting aside a decree for Rs. 4,581, as amended by the learned District Judge in first appeal, and dismissing the plaintiff's suit.

Falshaw, J.

The only question involved in the appeal before us, although other points were contested at earlier stages, is whether the suit instituted by the appellant was within time. The facts relevant to this question are as follows. Certain land was mortgaged for Rs. 3,500 on the 2nd of June, 1926, by Lachhman Das, the father of Des Raj, respondent whose wife Shrimati Vidya Wati is also a respondent. The original mortgagee Ganda Ram mortgaged his mortgagee rights with the People's Bank of Northern India, Ltd., which obtained a decree against Ganda Ram, in execution of which the mortgagee rights were purchased by Hargurdial Singh appellant in 1936, for Rs. 450. After that Hargurdial Singh was shown as the mortgagee in the revenue records.

In execution of a decree obtained by one Gujjar Mal against Lachhman Das, the original mortgagor, the equity of redemption of the mortgaged land was sold in Court auction and purchased by Ram Lal, who was joined as a defendant in the present suit, in 1940. Ram Lal gifted the rights thus acquired shortly afterwards in favour of Shrimati Vidya Wati. The present suit was instituted by Hargurdial Singh to enforce his mortgage

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claiming Rs, 5,000 on account of principal and interest on the 22nd of May, 1951. Lachhman Das the original mortgagor had long since died and Des Raj and his wife were impleaded as defendants along with Maharaj Kishan, the other son of Lachhman Das, and Ram Lal the auction-purcher of the equity of redemption.

The period of limitation in a suit to enforce a mortgage is governed by the provisions of Article 132 of the Limitation Act, the period of limitation for a suit to enforce payment of a charge on immovable property being fixed as 12 years from the date when the money sued for becomes due. No period for redemption was fixed in the terms of the mortgage itself. The main terms were that the mortgagor was to remain in possession of the land but was to pay to the mortgagee interest at the rate of 9 per cent per annum, which was payable for a whole year, and year by year. In default of payment of interest for one year or more years the mortgagee was to have the option of either realising the interest due alone or realising the principal amount of the mortgage plus the interest due by proceeding against the mortgaged property.

In view of these terms there is no doubt that the suit instituted in May, 1951, would be hopelessly barred by time but for the fact that the existence of the mortgage had been acknowledged in writing by Des Raj defendant in a schedule of his debts filed in an insolvency petition on the 22nd of May, 1939. If, as was held by the learned Single Judge in second appeal, this acknowledgment itself was made after the period of limitation had expired, it would have no effect and a suit would be barred by time in spite of it. This finding, however, was based on the finding that the starting point of limitation was the date of the mortgage itself, and not, as was held by the Courts below, a date one year after the execution of the mortgage.

The view of the learned Single Judge was based on the argument that the clause in the mortgage that interest could only be paid on a full year

as well as year by year did not mean that the mortgagee could not have enforced his mortgage from the very outset, but merely that if he wished to enforce the mortgage during the first year he would not be able to claim any interest since mortgage money means principal only where no interest is due or can be claimed.

At the same time the learned Single Judge appears to have accepted as correct the view expressed by Sir George Lowndes in *Lasa Din v. Mt. Gulab Kanwar and others* (1), that mortgage money does not become due within the meaning of Article 132 of the Limitation Act until both the mortgagor's right to redeem and the mortgagee's right to enforce his security have accrued. Once this view is accepted as correct, as I consider it must be, it appears to me that the learned Single Judge was wrong in concluding that it would have been open to the mortgagee in the present case to enforce his mortgage without any delay, and even on the next day after the mortgage was executed, since in my opinion it is quite evident that the mortgagor could not have redeemed the mortgage until at least one year had expired. If the mortgagor had wanted to redeem the mortgage within days, or even hours, of its execution, by that time some small sum would have become due as interest and he would certainly have been met with a plea that he would have to wait until at least one full year's interest was due. In fact although it has not been clearly expressed in the terms of the mortgage the intention of the parties appears to have been that the mortgage was to subsist for at least one year before either any right of enforcement or redemption accrued. I am, therefore, of the opinion that the view taken by the Courts below on the matter of limitation was correct and I would accordingly accept the appeal with costs and restore the decree of the District Judge for Rs. 4,581 in plaintiff's favour.

TEK CHAND, J.—I agree.

B.R.T.

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(1) A.I.R. 1932 P.C. 207.