

Jagannath Singh obtained a temporary injunction from the Civil Court restraining Bhairu Singh's son from interfering with his possession of the house, and then applied to the Magistrate for stay of the proceedings which was issued with a direction that the Tehsildar concerned shall take over possession of the house as a Receiver. Sajjan Singh, son of Jagannath Singh went up in revision to the Sessions Court and then to the High Court but remained unsuccessful. The High Court held that the order of attachment of the house and the appointment of the Receiver were valid and that the temporary injunction issued by the Civil Court had no effect upon the proceedings before the Sub-Divisional Magistrate. Sajjan Singh, son of Jagannath Singh took an appeal to the Supreme Court which was dismissed but with the following observations :—

“In our opinion this case must go back to the Sub-Divisional Magistrate for decision of the proceedings before him. Those proceedings commenced as far back as 1967 and the question whether there is or there is not any apprehension of breach of peace will certainly have to be decided in the light of the happenings in the Civil Court. In the meantime, we do not see any reason to order the setting aside the order of the High Court. It will be open to the Sub-Divisional Magistrate to consider whether the Receiver should be continued or not, but in any event, he shall not disturb the possession of Sajjan Singh, son of Jagannath Singh so long as the temporary injunction is outstanding and pending the decision of the proceedings under section 145 of the Code of Criminal Procedure, with a view to handing over the possession to the other side.”

(8) For the reasons stated above, the petition succeeds and is accepted, and the order of the learned Sub-Divisional Magistrate, Kaithal, is set aside.

N.K.S.

Before B. R. Tuli & B. S. Dhillon, JJ.

GURDITTA SINGH AND ANOTHER,—Appellants.

*versus*

HARBANS SINGH (MINOR) UNDER THE GUARDIANSHIP OF HIS FATHER,—Respondent.

L.P.A. 213 of 1973.

April 9, 1974.

*Redemption of Mortgages (Punjab) Act, 1913—Sections 4 and 12—Land under mortgage—Mortgagor's application for redemption*

Gurditta Singh and another *v.* Harbans Singh (minor) under the guardianship of his father (Tuli, J.)

*thereof dismissed by the Collector—No finding that the mortgage does not subsist—Suit under section 12 not filed within one year—Suit for possession by redemption of the mortgagor filed within limitation—Whether maintainable.*

*Held*, that the dismissal of a petition for redemption made under the Redemption of Mortgages (Punjab) Act 1913 does not have the effect of extinguishing the right of the mortgagor to redeem the mortgage by having resort to a suit in a civil Court. The only effect of dismissal of the petition is that no second petition can be filed and the finding of the Collector is conclusive unless set aside in a suit under section 12 of the Act. The non-filing of a suit under section 12 of the act within one year of the date of the Collector's order is not fatal to the maintainability of a suit for possession of the land by redemption under the general law. The remedy provided under the Act is a summary remedy in addition to the ordinary remedy and not in substitution thereof. If a mortgagor does not avail of that remedy or if his petition is dismissed without holding that his right to redeem had got extinguished, he is not debarred from filing a suit for redemption of the land in the Civil Court within the period of limitation provided under the Limitation Act. It is only if the Collector holds that the mortgage does not subsist and the mortgagor has no right to redeem it, that he will be debarred from filing any suit other than a suit to set aside that order of the Collector under section 12 of the Act, which has to be filed within one year. (Para 5)

*Letters Patent Appeal under Clause X of the Letters Patent. against the judgment of Hon'ble Mr. Justice R. N. Mittal, dated September, 4, 1972 passed in R.S.A. 1460 of 1966, affirming with cost that of Shri Banwari Lal Singal, Additional District Judge Faridkot, dated the 3rd September, 1966, who affirmed that of Shri K. C. Dewan, Sub Judge 1st Class, (A) Faridkot, dated the 16th March, 1966, dismissing the plaintiff's suit. Both the courts left the parties to bear their own costs.*

*Claim :—Suit for possession through redemption of 16 K 16 Marlas of land comprising in khasra Nos. 260 1606 is situated in the area of village Gujjar on payment of Rs. 850.*

K. S. Raipuri, Advocate, for the appellants.

S. S. Rathor and R. S. Chowdhry, Advocates, for the respondent.

#### JUDGMENT

TULI, J.—This judgment will dispose of Letters Patent Appeals Nos. 213 of 1973 (*Gurditta Singh and another v. Harbans Singh*)

214 of 1973 (*Gurditta Singh and another v. Resham Singh*) and 215 of 1973 (*Gurditta Singh and another v. Jaswant Singh*), as the point of law involved is common to all the 3 appeals.

(2) Kalha Singh executed 3 mortgages for Rs. 850 each in favour of Resham Singh (respondent), Jaswant Singh (respondent) and Harbans Singh (respondent) on September 17, 1962, June 17, 1961 and May 31, 1962; respectively. The area of the land mortgaged in favour of Resham Singh and Jaswant Singh was 16 Kanals 16 Marlas each while the area of the land mortgaged in favour of Harbans Singh was 16 Kanals. Kalha Singh filed separate petitions against each mortgagee under the Redemption of Mortgages (Punjab) Act, 1913, (hereinafter referred to as 'The Act'), which were decided by the Collector by order dated February 3, 1964, on a compromise arrived at between the parties. The mortgagor had deposited Rs. 10 in each case as the amount on the payment of which, he alleged, he was entitled to redeem. An objection was raised by each of the mortgagees that Rs. 850 were due to him on account of the mortgage. The mortgagor, Kalha Singh, agreed to pay the remaining amount of Rs. 840 to each mortgagee within a month of the order and each mortgagee was to deliver possession of the land mortgaged to the mortgagor on May 1, 1964, after receipt of the mortgage amount. If the mortgagor failed to make such deposit, his petition was to be deemed as dismissed. Kalha Singh defaulted in the payment of the mortgage amount and filed a separate suit against each mortgagee for redemption under section 12 of the Act on June 12, 1964. Those suits were dismissed in default on July 22, 1964, because none appeared on behalf of the plaintiff who had died. Instead of making an application for bringing his legal representatives on record, Gurditta, son of Kalha Singh and Attar Kaur; widow of Kalha Singh; filed 3 separate suits for possession of mortgaged land against each mortgagee by redemption on payment of the mortgage money. These suits were filed more than one year after the date of the order of the Collector dismissing the petitions of Kalha Singh and were resisted by the mortgagees on various pleas. The learned trial Court framed the following preliminary issues in each suit:—

- (1) Whether the present suit is not maintainable in view of the dismissal of a suit under section 12 of the Redemption

Gurditta Singh and another *v.* Harbans Singh (minor) under the guardianship of his father (Tuli, J.)

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of Mortgages (Punjab) Act by order dated February 3, 1964?

(2) Whether the present suit is barred by time as alleged in the written statement?

(3) Whether the suit in the present form is competent?

(3) The learned trial Court decided issues 1 and 2 against the plaintiff and, in view of that decision, held that issue 3 had become redundant. Consequently, the suits were dismissed on March 16, 1966. The appeals of the plaintiffs were dismissed by the learned Additional District Judge, Faridkot, on September 3, 1966; and Regular second appeals filed against the first appellate decrees were also dismissed by the learned Single Judge on September 4, 1972. Against those judgments, the present appeals under Clause 10 of the Letters Patent have been filed after obtaining the permission of the learned Single Judge.

(4) The only point that was argued before the learned Single Judge was whether the suits were maintainable in view of the dismissal of the petitions of Kalha Singh under the Act by the Collector on February 3, 1964, and the suits, to set aside that order, having not been filed within one year of the date of the order. It has, therefore, to be determined as to what is the effect of the dismissal of a petition under the Act by the Collector. The preamble of the Act makes it clear that it was enacted to provide a summary procedure for the redemption of certain mortgages of land in Punjab. Sections 4 to 11 of the Act provide for the making of the petitions for redemption of mortgages and the procedure for their trial. Section 6 also states the form in which the order has to be passed. Section 12 provides that any party aggrieved by an order made under sections 6, 7, 8, 9, 10 or 11 of the Act may institute a suit to establish his rights in respect of the mortgage, but, subject to the result of such suit, if any, the order shall be conclusive, and section 13 provides that the dismissal of a petition under the Act shall bar any further petition under the Act by the same petitioner or his representative in respect of the same mortgage. It is thus clear that Gurditta and Attar Kaur could not file another petition under the Act in view of the dismissal of Kalha Singh's petition on Feb-

ruary 3, 1964, in respect of any of the three mortgages. There is, however, no provision in the Act to the effect that if a petition is dismissed by an order made under sections 6, 7, 8, 9, 10 or 11 of the Act, the right of the mortgagor to redeem the mortgage shall be extinguished. What is made conclusive by section 12 of the Act, if no suit is filed, is the finding with regard to the rights of the mortgagor and the mortgagee in respect of the mortgage, which was the subject-matter of dispute before the collector in a petition under the Act. The dismissal of a petition does not have the effect of extinguishing the right of the mortgagor to redeem the mortgaged property. Their Lordships of the Privy Council in *Raghunath Singh and others v. Mt. Hansraj Kunwar and others* (1), held:—

“The provision in a decree in a suit for redemption that in case of default by the plaintiff in payment, his case will stand “dismissed” cannot be construed as meaning that the plaintiff was to be debarred of all right to redeem and that the decree was an order of a Court extinguishing the right to redeem within the meaning of the proviso to section 60 of the Transfer of Property Act. A second suit for redemption will be maintainable in such cases.”

(5) Applying the ratio of this decision it becomes evident that the dismissal of a petition for redemption made under the Act will not have the effect of extinguishing the right of the mortgagor to redeem the mortgage by having resort to a suit in the civil Court. The only effect of dismissal of the petition is that no second petition can be filed. In the cases in hand, what was made conclusive by section 12 of the Act between the parties was that the mortgagor was liable to pay Rs. 850 on account of the mortgage and not Rs. 10 only. That was the finding against him and unless he got that finding against him and unless he got that finding set aside by filing a suit under section 12 of the Act, he was bound by it and in the suits, which have been filed by his legal representatives, they cannot plead that the amount due from them for redemption is less than Rs. 850. The non-filing of the suits under section 12 of the Act within one year of the date of the Collector's order is not fatal to the maintainability of the suits of the appellants for possession of the land by redemption under the general law. The remedy provided by

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(1) A.I.R. 1934 P.C. 205.

Gurditta Singh and another v. Harbans Singh (minor) under the guardianship of his father (Tuli, J.)

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the Act is a summary remedy in addition to the ordinary remedy and not in substitution thereof. It cannot, therefore, be held that if a mortgagor does not avail of that remedy or if his petition is dismissed without holding that his right to redeem had got extinguished, he is debarred from filing a suit for redemption of the land in the civil Court within the period of limitation provided under the Limitation Act. It is only if the Collector holds that the mortgage does not subsist and the mortgagor has no right to redeem it, that he will be debarred from filing any suit other than a suit to set aside that order of the Collector under section 12 of the Act, which has to be filed within one year of the date of the order. Such was the case in *Kaura and another v. Ram Chand and another* (2), on which great reliance has been placed by the learned counsel for the respondents, but the ratio of which cannot be applied to the facts of these appeals.

(6) For the reasons given above, I am of the opinion that the suits filed by the appellants against the respondents were maintainable and were not barred under any provision of the Act and that the decision on the preliminary issues should have been rendered in favour of the plaintiffs-appellants. I accordingly decide all the preliminary issues in favour of the plaintiff-appellants, set aside the judgments and decrees of the learned Single Judge in all the three cases and remand them to the learned trial Court for decision on merits. In the circumstances of the case, there is no order as to costs.

DHILLON, J.—I agree.

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N.K.S.

*Before R. S. Narula & M. R. Sharma, JJ.*  
 BAWA AMRITA NAND GIR,—*Petitioner.*

*versus*

THE ADVOCATE-GENERAL, PUNJAB & OTHERS,—*Respondents.*

C.W. 3077 of 1970.

April 10, 1974.

*Code of Civil Procedure (Act V of 1908)—Section 92—Constitution of India (1950)—Article 226—Advocate-General while giving*

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(2) A.I.R. 1925 Lahore 385.