

Baldev Singh and others v. Kishan Singh and others  
(J. V. Gupta, J.)

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had not split the original tenancy. As pointed out already, the previous application for eviction had been filed on identical grounds. If there was any merit in the contention under consideration the landlords, instead of withdrawing it, should have prosecuted the application against the tenants. But it seems that after inducting Bakhshish Ram as tenant for half of the property the landlords felt that the change in the situation was not favourable to them. The permission to file the present application, which has been held to be *mala fide* by the Appellate Authority, does not in any way improve matters for the landlords.

(7) Admittedly, the grounds on which the Rent Controller ordered eviction existed before the filing of the previous application. By reasons of the creation of new tenancy in favour of the tenants and Bakhshish Ram, the grounds of eviction are of no avail to the landlords. Besides, the findings of fact in paragraphs 4, 5 and 6 of the order of the Appellate Authority against the landlords were not agitated before me.

(8) In the result, this petition fails and the same is hereby dismissed with costs.

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N.K.S.

*Before J. V. Gupta, J.*

BALDEV SINGH AND OTHERS,—Appellants.

*versus*

KISHAN SINGH AND OTHERS,—Respondents.

*Regular First Appeal No. 289 of 1975.*

September 22, 1983.

*Code of Civil Procedure (V of 1908)—Section 148 and Order 34 Rule 8—Suit for redemption of mortgage—Preliminary decree passed in favour of the plaintiff—Passing of the final decree stayed by the Appellate Court—Appeal subsequently dismissed—Trial Court extending time for plaintiff to deposit the decretal amount—Plaintiff depositing the amount within the extended period and*

*moving application for the passing of a final decree—Limitation for moving such application—Whether commences from the date of deposit of the decretal amount—Trial Court—Whether could extend the period for depositing the decretal amount.*

*Held*, that where in a suit for redemption of mortgage a preliminary decree is passed in favour of the plaintiff and on appeal the Appellate Court stayed the passing of the final decree, the trial Court after the dismissal of the appeal could extend the time for the plaintiff to deposit the decretal amount and if the said amount is deposited within the extended period, the cause of action for filing an application for the passing of a final decree under Order 34 Rule 8 of the Code of Civil Procedure, 1908 would arise only on the deposit of the amount found due by the Court and it could not be said that the application filed after the deposit of the decretal amount was beyond limitation. Under section 148 of the Code, the trial Court could certainly extend the time for depositing the amount found due even though the period originally fixed or granted may have expired. Once a suit is filed within limitation and the Court granted some period for the doing of any act prescribed or allowed by the Code, then the Court in its discretion can enlarge such period from time to time even though the period originally fixed or granted may have expired.

(Paras 7 and 9).

*Regular First Appeal from the decree of the Court of the Senior Sub Judge, Gurdaspur dated the 7th day of February, 1975, passing a final decree with costs as claimed for in favour of the appellants. The respondents are ordered that they should deliver the documents referred to in the preliminary decree to the appellants and also retransfer at the costs of the applicants, the mortgaged property, as directed in the preliminary decree. They are further ordered to put the applicants in possession of the property in dispute.*

A. N. Mittal and Shri Viney Mittal, Advocates, for the Appellant.

R. P. Bali, Advocate, for the Respondent.

#### JUDGMENT

J. V. Gupta, J.

(1) This appeal is directed against the final decree passed by the Trial Court in a suit for redemption of usu-fractuary mortgage.

(2) The relevant facts briefly are that on 20th November, 1963 a preliminary decree was passed in favour of the plaintiff/respondent

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for redemption of the suit property on payment of Rs. 29,676. The plaintiffs were allowed three months time to deposit the aforesaid amount for payment to defendant Nos. 1 and 2 failing which the defendants were entitled to apply for final decree. The plaintiffs were dissatisfied with the decree as to the amount found due by the Trial Court. Thus they filed a Regular First Appeal in this Court which was registered as R.F.A. No. 49 of 1984. The said Regular First Appeal was finally decided on 26th November, 1973 and the plaintiffs' appeal was dismissed. During the pendency of the appeal an application was moved on behalf of the plaintiffs under Order 41 Rule 5 C.P.C. for the grant of stay order thereby staying proceedings under Order 34 Rule 8 of the Code of Civil Procedure. On that application on 19th November, 1965 this Court passed the following order:

“If the final orders are passed on the Respondents' application under Order 34, Rule 8 C.P.C. it will lead to unnecessary complications as the appeal is pending against the preliminary decree. I accordingly order that so long as the petitioners appeal is not disposed of final orders on the respondents' application under Order 34 Rule 8 C.P.C. shall not be passed.”

(3) After the decision in the said Regular First Appeal the plaintiffs moved an application on 3rd December, 1973 for extension of time for depositing the decretal amount of Rs. 29,676. The Trial Court,—*vide* detailed order dated 3rd January, 1974 extended the time by one month for depositing the said amount by the plaintiffs. The said amount was deposited on 1st February, 1974 in the Trial Court. On the deposit of the said amount on 4th February, 1974 an application under Order 34 Rule 8 C.P.C. for passing the final decree was moved on behalf of the plaintiffs which was contested by the defendants by filing their reply on 12th June, 1974. On the pleadings of the parties the Trial Court framed the following issues:

1. Whether the application is within time ? O.P.A.
2. Whether the respondents are entitled to interest from the date of passing of the preliminary decree upto the date of passing of the final decree, if so, at what amount ? O.P.R.
3. Whether the applicants are entitled to take possession of Khasra No. 6/2, 7 of Rectangle No. 122 ? O.P.A.

4. At what amount, are the applicants entitled to get the final decree, in their favour? O.P.A.
5. Relief ?

(4) Under Issue No. 1 the Court found that since the plaintiffs have complied with the order of the Court and have deposited the amount within one month's extension allowed their application will be considered to have been filed well within limitation. Under Issue No. 2 the Trial Court concluded that the defendants (Mortgagees) are not entitled to any interest from the date of the passing of the preliminary decree upto the passing of the final decree. Issue No. 3 was also decided in favour of the Plaintiffs. Under Issue No. 4 the Trial Court found that the plaintiffs are entitled to get the final decree passed in their favour on payment of the said amount of Rs. 29,676 and nothing more. Consequently the final decree was passed in favour of the Plaintiffs (Mortgagors) and against the defendants (Mortgagees). Dissatisfied with the same the defendants (Mortgagees) have come up in Appeal in this Court.

(5) The only argument raised on behalf of the Appellants is that the application filed on behalf of the Mortgagors under Order 34 Rule 8 C.P.C. for passing the final decree dated 4th February, 1974 was barred by time and moreover the Trial Court had no jurisdiction to extend the time for depositing the decretal amount,—*vide* its order dated 3rd January, 1974. According to the Learned Counsel for the Appellants no time could be extended by the Trial Court after the period of limitation for redemption has expired. In any case, according to the Learned Counsel no application for extension of time could be filed after more than three years from the preliminary decree passed on 20th February, 1963. In support of his contention he referred to *Paltan Mahto and another v. Jagaru Mahto and another* (1), and *Md. Azim and Others vs. Md. Sultan and others* (2).

(6) On the other hand Learned Counsel for the Mortgagors submitted that time could be extended under Section 148 C.P.C. by the Trial Court and thus it was rightly extended,—*vide* order dated 3rd January, 1974. The limitation for filing an application for final decree will start from the date when the amount was deposited on

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(1) A.I.R. 1974 Patna 276.

(2) A.I.R. 1946 Patna 99.

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1st February, 1974 and therefore the application under Order 34 Rule 8 C.P.C. was within limitation. In support of this contention he referred to *Smt. Atto vs. Balwant Kaur* (3), *Om Parkash and another vs. Dewan Chand and others* (4), *Surendra Nath Gupta and others vs. State of Haryana and others* (5) and *Angammal vs. V.K.M. Muhammad Sulaiman Lebai and another* (6).

(7) I have heard the Learned Counsel for the parties at a great length and have also gone through the case law cited at the Bar. The judgments of the Patna High Court relied on by the Learned Counsel for the Appellant are of no help to decide the controversy in the present Appeal. It is a common case of the parties that even is the amount found due by the Trial Court in the preliminary decree was not deposited within the time allowed by the Court even then if there was limitation for redemption of the suit property even the second suit was also competent. It was under these circumstances it was held in the said judgments that there was no need for getting extension of the time for depositing the amount found due by the Trial Court in its preliminary decree, since there was still time for the plaintiffs (Mortgagors) to get the suit land redeemed from the Mortgagee. In the present case the passing of the final decree was stayed by the High Court on 19th November, 1965—As soon as the Regular First Appeal was decided in the High Court on 20th November, 1973 an application for extension of the time for depositing the amount was filed on 3rd December, 1973. The time was extended by the Trial Court on 3rd January, 1974. Admittedly, the said amount was deposited within the extended time. Thus the cause of action for filing an application under Order 34 Rule 8 C.P.C. would arise only on the deposit of the amount found due by the Court. Thus it could not be successfully argued that the application filed on 4th November, 1974 for passing of the final decree was beyond limitation.

(8) Section 148 of the Code of Civil Procedure provides.

“148. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge

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(3) 1979 P.L.J. 442.

(4) A.I.R. 1964 Pb. 413.

(5) A.I.R. 1971 Pb. 442.

(6) A.I.R. 1946 Madras 38.

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such period, even though the period originally fixed or granted may have expired."

(9) Under the said provision the Trial Court could certainly extend the time for depositing the amount found due even though the period originally fixed or granted may have expired. It could not be successfully argued on behalf of the mortgagee that the time could not be extended after the right to redeem had expired from the date of the original mortgage. There is no warrant for such a proposition. Suppose in a given case if suit for redemption of usufructuary mortgage is filed on the last date of limitation and at the time of passing of preliminary decree time is allowed by the Trial Court for depositing the amount found due from the mortgagor to the mortgagee, then in that situation the Trial Court could not extend the time under Section 148 C.P.C., according to the contention of the Learned Counsel for the Appellant. As observed earlier this proposition cannot be accepted. Once a suit is filed within limitation and the Court granted some period for doing of any act prescribed or allowed by this Code then the Court in its discretion can enlarge such period from time to time even though the period originally fixed or granted may have expired. It is not disputed that in the present case time was allowed by the Trial Court for depositing the said amount due as provided under Order 34 Rule 7 C.P.C. Thus the time was allowed under the Code and therefore under Section 148 the Court was competent to extend the same from time to time.

(10) Apart from that there was no occasion earlier for the plaintiff-Mortgagors to move the Court for extension of time when the Regular First Appeal was pending in this Court. It was only after 20th November, 1973 when the appeal was decided, an application for extension of the time could be filed. Thus it could not be successfully argued that the application was barred by time in any manner. In any case Section 148 of the Civil Procedure Code does not contemplate any application as such which authorises the Court to enlarge such period from time to time even though the period originally fixed or granted may have expired. Thus viewed from any angle the application filed on 4th February, 1974 under Order 34 Rule 8 C.P.C. was within limitation and the Trial Court rightly found the same in favour of the Plaintiff (mortgagor). No other point arises nor has been argued. Consequently, the appeal fails and is dismissed with costs.

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S.C.K.