

Before A. L. Bahri, J.

LAKHMIR SINGH SON OF KEHAR SINGH AND
OTHERS,—Appellants.

versus

SUCHA SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 1515 of 1989.

26th October, 1989.

Limitation Act, Section 16(1) and (5)—Suit for redemption—No time fixed for getting the land redeemed—Suit for possession not filed by mortgagor in his life time—Plaintiffs filing suit for possession on the basis of will after the expiry of period of limitation—Benefit of S. 16—Whether can be availed.

Held, that on perusal of S. 16 of the Limitation Act as reproduced above, it is clear that the same cannot be applied on the facts of the case in hand. There was no time fixed for the mortgage deed after which the same could be redeemed. Therefore, any time after its execution the mortgage could be redeemed meaning thereby that Bhagwan Singh, the mortgagor during his life time could have redeemed the mortgage. First part of S. 16(1) of the Limitation Act is, therefore, not attracted to the case in hand, as right to sue had accrued before he died. The second part is also not attracted to the case in hand on that very ground, that is, on his death no right to redeem had accrued rather it had already accrued. His legal representatives or the persons in whose favour he had executed the will could have immediately on the death of Bhagwan Singh file the suit for redemption of the land in dispute of course, within general period of limitation, that is, 30 years. Further more in view of Section 16(3) of the Limitation Act, Section 16(1) does not apply to suits for possession of immovable property. (Para 3)

Regular Second Appeal from the order of the Court of Shri R. M. Gupta, Additional District Judge, Ropar, dated 6th April, 1989 reversing that of Shri T. R. Bansal, PCS, Sub Judge 1st Class, Kharar, dated, 31st January, 1986, allowing this appeal and setting aside the judgment and decree under appeal and dismissing the suit of the plaintiff-respondents with cost throughout.

CLAIM:—*Suit for possession by way of redemption of agriculture land measuring 18 kanals 2 marlas bearing khewat Khata No. 11/14 and khasra Nos. 26/8/2/(4-0), 12/2(6—18), 13/1(4-0), and 18/4(3-4) situated in Village Behlan Khanpur, Tehsil Kharar on payment of Rs. 2000.*

CLAIM IN APPEAL:—*For reversal of the order of Lower Court.*

Roshan Lal Sharma, Advocate, for the Appellants.

M. L. Sarin, Sr. Advocate (Mr. Pankaj Sharma, Advocate with him), for the Respondents.

others (A. L. Bahri, J.)

JUDGMENT

A. L. Bahri, J. (Oral)

(1) One Bhagwan Singh had mortgaged the land in dispute on September 18, 1940 in favour of Sucha Singh and others for a sum of Rs. 2,000. He died on May 9, 1964 leaving behind a will in favour of Lakhmir Singh and others, the present plaintiffs. The present suit for possession by redemption was filed by Lakhmir Singh and others on May 23, 1961. During this period, there was other litigation. The will executed by Bhagwan Singh was under challenge and ultimately the High Court on November 26, 1975 adjudicated upon the validity of the will in favour of Lakhmir Singh and others. It was thereafter that the present suit was filed by Lakhmir Singh and others. The trial Court decreed the suit holding to be within time excluding the time spent for obtaining adjudication on the basis of the will. The lower appellate Court had set aside the said judgment and decree holding the suit to be barred by time and that the provisions under Section 16 of the Limitation Act were not attracted to the case in hand. This is a second appeal filed by Lakhmir Singh and others. After notice of motion having been issued, the case has been argued by the counsel for the parties.

(2) Section 16(1) and (3) of the Limitation Act read as under:—

Section 16(1) Where a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, or where a right to institute a suit make an application accrues only on the death of a person, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting such suit or making such application.

(2)

(3) Nothing in sub-section (1) or sub-section (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of a hereditary office.

(3) On perusal of Section 16 of the Limitation Act as reproduced above, it is clear that the same cannot be applied on the

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facts of the case in hand. There was no time fixed for the mortgage deed after which the same could be redeemed. Therefore, anytime after its execution the mortgage could be redeemed meaning thereby that Bhagwan Singh, the mortgagor during his life time could have redeemed the mortgage. First part of Section 16(1) of the Limitation Act is, therefore, not attracted to the case in hand, as right to sue had accrued before he died. The second part is also not attracted to the case in hand on that very ground, that is, on his death no right to redeem had accrued rather it had already accrued. His legal representatives or the persons in whose favour he had executed the will could have immediately on the death of Bhagwan Singh file the suit for redemption of the land in dispute, of course within general period of limitation, that is, 30 years. Further more in view of Section 16(3) of the Limitation Act, Section 16(1) does not apply to suits for possession of immovable property.

(4) Learned counsel for the appellants has referred to the decision of Madras High Court in *A.N.C.T. Subbiah Thevar and Others v. N. R. Semiappa Mudialiar and Others* (1), on the proposition that there can be no cause of action until there is a party capable of suing and until there is a cause of action, there can be no question of the law of limitation coming into operation. I find that the ratio of this case is not applicable to the case in hand, although there is no dispute in respect of the law as stated. The cause of action in the present case had already accrued immediately on the execution of mortgage itself, as Bhagwan Singh was living at that time and could file the suit. The other judgment referred to by the learned counsel for the appellants is of Calcutta High Court in *Monmohan Haldar and Others v. Dibbendu Prasad Roy Choudhury and Others* (2), wherein it was observed that the principle is well established that if there is really no one who can bring a suit limitation does not begin to run. This decision again is not applicable to the case in hand when the right to sue accrued, there was person who could file the suit, and the limitation once having started would not stop. Finally, reliance has been placed on the decision of this Court in *P. S. Nagaranjan v. Robert Hotz*. (3). That was the case

(1) A.I.R. 1938 Madras 353.

(2) A.I.R. 1949 Calcutta, 199.

(3) A.I.R. 1954 Punjab 278.

relating to rendition of accounts on the death of one of the partners. In view of Section 17 of the Limitation Act (Old) it was observed that the right to institute the suit must accrue after the death of the person concerned and not because of his death. The death must not in any way affect the right to sue and must not give rise to the cause of action. An administrator, if may be noticed, claimed exemption under S. 17 of the Limitation Act (Old) and it was held that by his appointment he was capable of instituting the suit. The ratio of this decision is also not applicable to the case in hand. The opinion of the lower Appellate Court that the provisions of Section 16 are not attracted to the present case is correct.

(5) In view of the position aforesaid, I find no merit in this appeal and the same is hereby dismissed. There will be, however, no order as to costs.

P.C.G.

Before G. R. Majithia, J.

DAULAT RAM, S/O SHRI BHOLA NATH AND
OTHERS,—Petitioners.
versus

THE SUTLEJ FINANCE PVT. LTD., SUTLEJ MARKET, G.T. ROAD,
JALANDHAR, THROUGH ITS MANAGING
DIRECTOR,—Respondent.

Amended Company Petition No. 86 of 1985.

May 24, 1989.

Companies Act (I of 1956)—Sections 433, 434 and 439—Petition for winding up—Company bona-fide disputed debt—Amount claimed, barred by limitation—Competency of winding up petition.

Held, that the machinery for winding up cannot be allowed to be utilised as a means for realising debts due from the company. If the debt was *bona fide* disputed, there cannot be neglect to pay within the meaning of section 434(1) (a) of the Act. The Principles on which the Company Court acts are : (1) that the defence of the Company is in good faith and one of substance; (2) the defence is likely to succeed in point of law and (3) the company produced *prima facie* proof of the facts on which defence depends. The claim is *prima facie* barred by time. The respondent-company has succeeded in