

The State
v.
Amru
and others

Kapur, J.

This case was started against the opposite party on the 20th of February, 1955. Respondents were convicted and sentenced to nine months' rigorous imprisonment on the 5th of July, 1955. Their appeal was heard by the learned Additional Sessions Judge and decided on the 31st of August, 1955.

The respondents have been on bail all this time and I have gone through the record to see as to the propriety and legality of their conviction. In my opinion the evidence produced brings guilt home to them, but taking into consideration the period of time this case has been hanging over their heads I think that it is a fit case in which in place of the sentence imposed I would substitute a sentence of imprisonment for the period already undergone and a fine of Rs. 50 each. In default they shall undergo a sentence of three months' further rigorous imprisonment.

APPELLATE CIVIL

Before Bishan Narain, J.

SUBEDAR MAJOR SADHU SINGH,—*Defendant-Appellant*

versus

CHANDA SINGH AND OTHERS,—*Plaintiffs-Respondents*

Regular Second Appeal No. 216 of 1956.

1956

Nov., 16th

Punjab Restitution of Mortgaged Lands Act, 1938 (Punjab Act IV of 1938)—Order of redemption passed by the Special Collector under the Act, without jurisdiction or in excess of it—Limitation for a suit to set aside such order if prescribed—Limitation Act (IX of 1908)—Article 14, applicability of to such suit.

Held, that when the order passed by the Special Collector under the Punjab Restitution of Mortgaged Lands Act is without jurisdiction or in excess of authority it is a nullity and need not be set aside. If the Act or an order of an officer is illegal or ultra vires it does not require to be set aside and Article 14 of the Limitation Act has no application.

Second Appeal from the decree of Shri B. L. Goswami, Additional District Judge, Amritsar, dated the 14th day of February, 1956, affirming that of Shri Des Raj Dhameja, Sub-Judge, 1st Class, Patti, dated the 29th July, 1955, decreeing the plaintiff's suit but the lower appellate Court ordered the parties to bear their own costs throughout.

H. L. SARIN, for Appellant.

F. C. MITTAL, for Respondents.

JUDGMENT.

BISHAN NARAIN, J.—This second appeal has been filed by Subedar Major Sadhu Singh against the decision of the Additional District Judge, Amritsar, dismissing his appeal and affirming the judgment of the trial Court to the effect that the possession of the property in dispute should be given to the plaintiffs.

The land in dispute at one time belonged to Jagat Singh, father of Subedar Sadhu Singh. On 27th June, 1895, he mortgaged this land with Dhanna Singh for Rs. 900. Then on 16th November, 1900 he mortgaged it again with Dhanna Singh for Rs. 1,600. The third mortgage was effected by him on 11th December, 1905, in favour of Dhanna Singh for Rs. 2,000 and finally the fourth mortgage was effected on 3rd June, 1914, for Rs. 3,850. This time the mortgage was by Jagat Singh in favour of Pal Singh, Tehl Singh and Mehl Singh sons of Dhanna Singh. On 6th August, 1943, Sadhu Singh applied for restitution of the mortgaged land in the Court of the Special Collector, Lahore, under the provisions of the Punjab Restitution of Mortgaged Lands Act, 1938 (Punjab Act No. IV of 1938). Apparently this application was contested on behalf of the mortgagees and on 6th March, 1945, the Collector ordered redemption of the mortgages on payment of Rs. 77 odd. The mortgagees filed an appeal in the Court of the Commissioner at Lahore but its fate is not known in view of the partition of the country during the pendency of

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that appeal. The village in which the land in dispute is situate was a part of the Lahore District but on partition it fell to the territory of India and is now a part of Tehsil Patti, District Amritsar. Sadhu Singh then applied to the Assistant Collector, Amritsar for possession and he took possession of the property on 21st May, 1950. Apparently the mortgagees again filed an appeal against the Special Collector's order but it was dismissed by the Financial Commissioner by his order dated 10th April, 1953. Thereupon the mortgagees filed the present suit on 6th July, 1954, for possession of the mortgaged land on the basis of the usufructuary mortgage dated 3rd June, 1914, out of which this appeal has arisen. The plaintiffs allege that they are entitled to possession of the land under the said mortgage deed. The suit was contested on various grounds but it is not necessary to refer to them in this appeal. The only two points that have been argued before me on behalf of the defendant-appellant are that the suit is barred by time and that in any case the order of the Special Collector ordering redemption of the mortgages was within the jurisdiction of the Special Collector and that a civil suit is not maintainable to contest that order. I shall first deal with the question of limitation. The contention of the learned counsel for the appellant is that Article 14 of the Indian Limitation Act applies to this case and as the suit was not filed within one year of the order of the Special Collector dated 6th March, 1945, the present suit is barred by time. Mr. Sarin in support of his argument has strongly relied on the decision of a Division Bench of this Court, *Kaura and another v. Ram Chand and another* (1). In that judgment the learned Judges were dealing with Punjab Act II of 1913 and it was laid down—

“When an order passed under a Special Act is declared by that Act to be conclusive, It

(1) A.I.R. 1925 Lah. 385.

cannot be ignored and no relief is open to the aggrieved party unless that order be set aside."

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It was further observed that an individual who takes advantage of a summary procedure must suffer its disadvantages as well as enjoy its benefits. Accordingly it was held that a mortgagor's right to redeem, which would otherwise be within limitation, is barred if the action is brought later than a year of the date of an order passed to the plaintiff's detriment by the Collector on an application under Punjab Act No. II of 1913. Their Lordships were dealing with an Act in which it was laid down in section 12 that any party aggrieved by an order under various sections of that 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. Under that Act it is, therefore, open to a party to challenge the order of the Special Collector by a suit filed in civil Court. Article 14 of the Indian Limitation Act prescribes a limitation of one year from the date of the order for a suit to set aside the order made by an officer in official capacity. The present suit, however, relates to Act No. IV of 1938. Section 12 of the 1938 Act lays down that no civil Court shall have jurisdiction to entertain any claim to enforce any right under a mortgage declared extinguished under this Act, or to question the validity of any proceedings under this Act. Thus under the 1938 Act, civil Courts have no jurisdiction whatsoever to entertain a suit challenging the decision of the Collector extinguishing the mortgage. This provision of law is very different from section 12 of Act No. II of 1913. When an order is passed under the 1938 Act then civil Court cannot set aside that order unless it be held that the order was without any jurisdiction. The present case is precisely of that nature. The

Subedar Major mortgagors' claim is that the order passed by the Special Collector relating to the present mortgage was without jurisdiction. When an order is passed without jurisdiction or in excess of authority it is a nullity and need not be set aside. If the act or an order of an officer is illegal or *ultra vires* it does not require to be set aside and Article 14 of the Limitation Act has no application,—vide *inter alia* *Secretary of State v. Faredoon Jijibhai Divecha and others* (1), and *Prativadi Bhayankaram Thiruvenkatacharyulu and others v. Secretary of State for India in Council*, (2). I, am, therefore, of the opinion that Article 14 of the Indian Limitation Act has no application in this case. It is conceded that the suit for possession under the 1914 mortgage independently of the order of redemption made by the Collector is within time. Accordingly I reject this contention of the learned counsel for the appellant.

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It was then argued that the order of the Special Collector was made validly in the exercise of jurisdiction vested in him and therefore this suit is not competent. Both the lower Courts have held that 1914 mortgage is independent of the previous mortgages. If this be so then the Special Collector would have no jurisdiction to extinguish it in view of section 7 read with section 2 of the Punjab Restitution of Mortgaged Lands Act, 1938. This is not disputed by the learned counsel for the appellant. His contention is that the finding given by the lower Courts is not warranted by the documents on the record. After going through the various transactions given above the learned counsel pointed out that the mutation relating to the mortgage of 1900 discloses that the transaction of that year consisted of the previous mortgage of Rs. 900 and of the new mortgage for Rs. 700 bringing the total to Rs. 1,600. It is clear to my mind from this mutation

(1) A.I.R. 1934 Bom. 434.

(2) I.L.R. 57 Mad. 501.

entry that the 1900 transaction was a mortgage in addition to the 1895 mortgage. Similarly the documents P. 10 and P. 17 show that the 1905 mortgage was in addition to the previous mortgages. The question however, still remains whether the 1914 mortgage was independent of the previous mortgages or not. The original mortgage deed is not forthcoming on this record. The lower Courts have held that this document is in possession of the defendant who has not deliberately produced it in spite of the application by the mortgagees asking him to do so. The lower appellate Court has drawn a presumption against the defendant to the effect that if that mortgage deed had been produced it would have shown that the 1914 mortgage is independent of the previous mortgages. This is a finding of fact. The learned counsel took me through certain documents to show that the original mortgage deed is not in possession of his client. But considering the entire matter it is clear that the defendant got it back from the Special Collector's Court. Sadhu Singh made an application (Ex. P. 6) on 13th June, 1950, to the Collector, Amritsar, for return of the mortgage deed dated 27th June, 1895, and other mortgages. Next day the necessary order was made by the Collector and the defendant took possession of the document at pages 23|24 of the file (Ex. P. 4). The index Ex. P. 3 shows that on those pages was a document executed by Jagat Singh in favour of Pal Singh. The only mortgage that was effected by Jagat Singh, father of Sadhu Singh, in favour of Pal Singh, Tehl Singh and Mehal Singh was the mortgage of 1914 and the previous mortgages had been executed in favour of Dhanna Singh alone. From this it is clear that the defendant got possession of the original mortgage deed of 1914 and the lower appellate Court was right in drawing a presumption against the appellant for not producing that document in Court. Moreover

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Subedar Major the mutation relating to this mortgage shows that it
 Sadhu Singh was an independent transaction. It is clear from
 the mutation 17 that it was an independent mortgage.
 Chanda Singh and others The language used in the mutation relating to pre-
 vious mortgages is different from the language used
 in this mutation. In the previous mutations the
 Bishan Narain, J. older mortgages are mentioned but not in Ex. P. 7.
 The reasonable inference is that the 1914 document
 had no connection with the previous mortgages.
 There was a lapse of about nine years between the
 mortgages of 1905 and 1914 and it is quite possible
 that all the mortgages up to 1905 may have been re-
 deemed earlier and this mortgage was effected not
 in connection with the previous mortgages but in
 connection with some other requirements. I, there-
 fore, see no reason to interfere with this finding of
 the lower Courts that the 1914 mortgage is indepen-
 dent of the previous mortgages. That being so the
 Special Collector, Lahore, had no jurisdiction under
 the 1938 Act to extinguish this mortgage. It is con-
 ceded that if the order of the Special Collector does
 not affect the rights of the parties then the plaintiffs
 are entitled to a decree for possession under the 1914
 mortgage. I, therefore, hold that the plaintiffs' suit
 was rightly decreed by the lower Courts.

The result is that this appeal fails and is dismis-
 sed with costs.

CIVIL MISCELLANEOUS

Before Falshaw, J.

BHAGAT RAM,—Petitioner

versus

S. SURJIT SINGH, ETC.,—Respondents

Civil Miscellaneous No. 198 of 1956.

*East Punjab Urban Rent Restriction Act (III of 1949) as
 amended by Punjab Act (XXIX of 1956)—Sections 4
 and 15—High Court—Power of revision, extent of—Expres-
 sion “in similar circumstances” in section 4(2)(a)—Mean-
 ing of.*

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Nov., 21st