

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1077-1078 OF 2012

DARSHNA KUMARI @ DARSHAN KAUR & ORS. APPELLANT(S)

VERSUS

SOHAN SINGH & ORS. ETC. RESPONDENT(S)

WITH

C.A. NOS.1045-1046/2012

O R D E R

The Civil Appeal Nos.1077-1078/2012 preferred by the plaintiffs are directed against the judgment and decree passed by the High Court dated 19.12.2007 whereby the High Court dismissed the suit of the plaintiffs - appellants seeking declaration of ownership on the ground that the mortgage has not been redeemed within a period of 20 years in terms of the decree confirmed by the Lahore High Court vide judgment dated 26.02.1947.

2. The Civil Appeal Nos.1045-1046/2012 are preferred by the State claiming that the mortgagors were the Muslims who migrated to Pakistan and, therefore, by virtue of the provisions of the Administration of Evacuee Property Act, 1950¹, the land came to be vested with the Government. Therefore, the State would be the

¹ For short, the '1950 Act'

mortgagors and is thus entitled to seek redemption in terms of the Judgment of this Court reported as 'Singh Ram (Dead) Through Legal Representatives Vs. Sheo Ram & Ors.'².

3. The brief facts leading to the present appeals are that one Puran Ditta and Sondhi executed three mortgage deeds mortgaging 19 kanals in favour of Shershah on 08.08.1885; 68 kanals in favour of Jai Ram on 22.08.1886 and 21 kanals 19 marlas in favour of Dhani Ram in the year 1887-1888. Kripa Ram, purchased the mortgage rights and came in possession of the mortgage property as mortgagee whereas Hakam Khan purchased the propriety rights of the lands mortgaged. Hakam Khan received an amount of Rs.1,500/- and Rs.1,000/- under subsequent mortgage deeds executed in favour of Kripa Ram on 21.12.1916 and 01.02.1921.

4. Hakam Khan died survived by his three sons - Abdul Satar, Gauna Khan and Abdul Gafoor. The sons of Hakam Khan filed an application under the provisions of the Punjab Redemption of Mortgages Act, 1913³, for extinguishment of the mortgaged rights. The Special Collector, Amritsar allowed the said application on 13.12.1944. Such order of redemption was challenged in a Civil suit by Kripa Ram claiming that he has a right to remain in possession of land for 20 years from 30.12.1944 or till the payment of Rs.2,500/-.

5. It may be stated that the order of the Collector for

² (2014) 9 SCC 185

³ For short, the '1913 Act'

redemption of mortgage is final subject to the suit under Section 13 of the 1913 Act. Section 13 reads thus:

"13. Any party aggrieved by an order made under section 6, 7, 8, 9, 10 or 11 of this 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.

Norwithstanding anything in this section a mortgagee against whom an ex-parte order under section 7 has been made or a petitioner, whose petition has been dismissed in default under section 6 may apply to the Collector to have such order or dismissal set aside, such order or dismissal on such terms as to costs or otherwise as he may deem fit; provided that the order or dismissal shall not be set aside unless notice of the application has been served on the opposite party."

6. The reference to the Punjab Restitution of Mortgaged Lands Act, 1938⁴ by the learned trial court and by the High Court seems to be mistake as an order passed under the 1913 Act alone can be disputed before the civil court whereas the order passed by the Collector under the 1938 Act is final. The 1938 Act is applicable only to the mortgage created before 08.06.1901, i.e., the date on which the Punjab Alienation of Land Act, 1900 came into force. Kirpa Ram had purchased mortgage rights on 21.12.1916 and 1.2.1921, therefore, 1938 Act was not applicable.

7. The Collector had passed an order on 30.12.1944 that the mortgage be extinguished. The mortgagee was allowed to remain in possession of the land for 20 years from 30.12.1944 or till the payment of Rs.2,500/- to him whichever was earlier by the judgment and decree dated 16.01.1946 granted by the Sub Judge, Ist Class, Amritsar. The appeal against the said judgment and

⁴ For short, the '1938 Act'

decree and the cross-objections were decided by the Court of Senior Sub Judge, Amritsar on 28.05.1946. The legal heirs of Hakam Khan preferred second appeal in the High Court at Lahore which was dismissed on 23.02.1947.

8. It is after the judgment and decree of the High Court, the legal heirs of Hakam Khan - Abdul Satar, Gauna Khan and Abdul Gafoor left India for Pakistan after partition of the country. To meet the challenges of migrating population, the East Punjab Evacuees (Administration of Property) Act, 1947⁵ was enacted after repealing the East Punjab Evacuees (Administration of Property) Ordinance, 1947. Section 4 of the 1947 Act contemplates vesting of evacuee property in the Custodian. The relevant provisions of the Statute read thus:

"2(b) 'Evacuee' means a person ordinarily resident in or owning property or carrying on business within the territories comprised in the Province of East Punjab, who on account of civil disturbances, or the fear of such disturbances, or the partition of the country -

(i) leaves, or has since the first day of March, 1947, left the said territories for a place outside India, or

(ii) cannot personally occupy or supervise his property or carry on business or watch his interests or enforce his rights.

2(c) 'evacuee property' includes all property in which an evacuee has any right or interest but does not include any movable property in his immediate physical possession;

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4. Vesting of evacuee property in the Custodian. - All evacuee property situated within the territories specified in sub-section (1) of section 5 of the Punjab Re-organisation Act, 1966, shall vest in the Custodian for the

⁵ For short, the '1947 Act'

purposes of this Act and shall continue to be so vested until it is returned to the owner in accordance with the provisions of Section 12."

9. In view of the said Act, the property vested with the Custodian with the enactment of the 1947 Act. The 1950 Act came into force on 17.04.1950. Section 4 of the 1950 Act gave overriding effect to the said Act. In terms of Section 8(2) of the 1950 Act, any property declared to be evacuee property under Section 7 of the 1950 Act shall be deemed to have vested in the custodian. Section 8(2) reads thus:

"8(2). Where immediately before the commencement of this Act, any property in a State had vested as evacuee property in any person exercising the powers of Custodian under any law repealed hereby, the property shall, on the commencement of this Act be deemed to be evacuee property declared as such with the meaning of this Act and shall be deemed to have vested in the Custodian appointed or deemed to have been appointed for the State under this Act, and shall continue to so vest:

Provided that where at the commencement of this Act there is pending before the High Court, the Custodian or any other authority for or in any State any proceeding under Section 8 or Section 30 of the Administration of Evacuee Property Ordinance, 1949 (12 of 1949), or under any other corresponding law repealed by the Administration of Evacuee Property Ordinance, 1949 (27 of 1949), then notwithstanding anything contained in this Act or in any other law for the time being in force, such proceeding shall be disposed of as if the definitions of 'evacuee property' and 'evacuee' contained in Section 2 of this Act had become applicable thereto."

10. The plaintiff had filed a suit for declaration that they

are owners in possession of the land measuring 66 Kanals 1 marlas, Killa 73. 10/2, 11/1,12, 13/2, 88/ 2/2, 9, 10/1, 12, 60/ 16,23, 24, 25 according to Jamabandi of the year 1972-73 situated in Village Balhanval, Tehsil Ajnala, District Amritsar and as a consequential relief, suit for permanent injunction restraining defendant Nos. 6 and 8 and defendants 1 to 5, their servants, agents, and other subordinates from interfering in the possession of the land in dispute. The challenge was to the mutation entries in favour of the State Government in the ownership column. The defendants (other than Defendant Nos. 1-5) are the person in possession without any title or interest.

11. The provisions of the 1950 Act came up for consideration before this Court in a judgment reported as 'Haji Esmail Noor Mohammad and Co. & Ors. Vs. Competent Officer, Lucknow & Ors.'⁶, wherein this Court was examining the identical provisions of the United Provinces Administration of Evacuee Property Ordinance, 1949 with the 1950 Act. It was held as under:

"7. Section 8(2) of this Act corresponds to Section 8(2) of the Central Ordinance 27 of 1949. This Act repeals the Ordinance and practically enacts its provisions. Under this Act also the automatic vesting of the evacuee property in the Custodian under the U.P. Ordinance 1 of 1949 deemed to have continued to vest under the Custodian appointed under the Central Ordinance 27 of 1949 is continued, by fiction, under this Act.

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In the instant case, from the narration of the facts it is clear that Abdul Latif Hajee Esmail, in view of the disturbed conditions, went away to Pakistan in the year 1948 and, therefore, he was an evacuee within the meaning of the U.P. Ordinance 1 of 1949. His property i.e. his interest in the partnership business, automatically vested under the

Ordinance in the Custodian. The Deputy Custodian of Evacuee Property, Kanpur, issued notice to the Firm on September 7, 1949, informing the Firm that the Kanpur property of the Firm would be taken possession. The said vesting was deemed to have taken place under the Central Ordinance 27 of 1949 and the Central Act 31 of 1950. Subsequent proceedings were taken under the provisions of the said Central Ordinance and Act. As stated above, the automatic vesting of Abdul Latif Hajee Esmail's share in the Firm was continued by Central Ordinance 27 of 1949 and Central Act 31 of 1950 by the deeming provisions contained therein. Therefore, no question of issuing further notice or making a declaration that the said interest was evacuee property under Section 7(1) of the Ordinance arises. Section 7 only applies to properties other than those which have been vested automatically in the Custodian. Such a vesting cannot be reopened under the Central Ordinance or the Central Act, for it has already vested thereunder by a fiction. It follows that the petitioners have no interest in the share of Abdul Latif Hajee Esmail in the Firm which had vested in the Custodian."

12. The question of vesting of share of the Muslim in the Shamlat land came up for consideration before the Constitution Bench of this Court in a judgment reported as 'Gram Panchayat of Village, Jamalpur Vs. Malwinder Singh & Ors'⁷, wherein it was held as under:-

"5. The question as to the management and preservation of the property left by Muslim evacuees led to the passing of the East Punjab Evacuees (Administration of Property) Act, 14 of 1947. That was an Act of the Punjab Legislature, Section 4 of which provided that all interests in the property whether movable or immovable, of the evacuees vested in the Custodian appointed by the State Government. That Act, like similar Acts passed by the other State Legislatures, was repealed and replaced by an Act passed by the Parliament, viz; the Administration of Evacuee Property Act, 1950, to which we will refer as the "Central Act of 1950". That Act came into force on April 17, 1950. Section 8(2) thereof provided that, if any property in the State had vested immediately before the commencement of the Act as evacuee property in any Custodian under any law repealed by the Act, that property shall, on the commencement of the Act, be deemed to be evacuee property and shall vest in the Custodian appointed for the State under the

Act. As a result of this provision, the interest of all evacuees which had vested in the Custodian under the Punjab Act 14 of 1947, came to be vested in the Custodian appointed under the Central Act of 1950. In the villages which were wholly inhabited by Muslims and from which almost the entire population migrated to Pakistan, all the Shamlat-deh lands together with the other proprietary lands were declared evacuee property and came to be vested in the Custodian. In the villages which were inhabited both by Muslims and non-Muslims the proprietary holdings of the Muslim evacuees vested in the Custodian and, along with that, the interest of the proprietors in the Shamlat-deh lands, such as it was, also vested in the Custodian."

13. In view of the said judgment, the share of the Muslim proprietors in the common land (Shamlat-deh) was held to be vesting with the custodian in terms of the provisions of the 1950 Act which was till then being treated to be vesting with the Gram Panchayat.

14. Thus, the evacuee property came to be vested with the State by operation of law. Therefore, the State was correctly shown in the column of ownership. The State has been rightly treated to be mortgagor by the High Court. The High Court allowed both the appeals including the appeal by the State and dismissed the suit for declaration filed by the plaintiffs-appellants.

15. In view of judgment of this Court in Singh Ram (Dead) Through Legal Representatives, there is no period to seek redemption of a usufructuary mortgage as it is held that once a mortgage is always a mortgage. Thus, the plaintiffs will continue to be mortgagee with the State as a mortgagor.

16. Therefore, on deposit of the mortgage amount of Rs. 2500/- with the collector, Amritsar or on payment to the mortgagees, the mortgage shall stand redeemed and the State will be entitled to possession of the property. Thereafter, it will be open to the State to take possession of the mortgage property in accordance with law. Such order is passed in terms of jurisdiction of this Court under Article 142 of the Constitution of India to do substantial and complete justice in this long pending issue of right of the mortgagors to seek redemption.

17. In view of the above, the plaintiff's appeals (C.A.Nos.1077-1078/2012) are dismissed whereas the appeals of the State defendant Nos.1 to 5 (C.A. NOS.1045-1046/2012), are allowed.

Pending application(s), if any, also stand disposed of.

.....J.
[HEMANT GUPTA]

.....J.
[V. RAMASUBRAMANIAN]

NEW DELHI;
4th MAY, 2022

ITEM NO.104 **R E V I S E D**
COURT NO.11 SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 1077-1078/2012

DARSHNA KUMARI @ DARSHAN KAUR & ORS. Appellant(s)

VERSUS

SOHAN SINGH & ORS. ETC. Respondent(s)

WITH

C.A. No. 1045-1046/2012 (IV)

Date : 04-05-2022 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Parties(s) Miss Geetanjali Mohan, AOR

Mr. R.K. Rathore, Adv.
Ms. Samten Doma, Adv.
Mr. Satinder S. Gulati, Adv.
Ms. Ranjeeta Rohatgi, AOR

Mr. K. K. Mohan, AOR

Mr. Yadav Narender Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

The plaintiff's appeals (C.A.Nos.1077-1078/2012) are dismissed whereas the appeals of the State defendant Nos.1 to 5 (C.A. Nos.1045-1046/2012), are allowed in terms of the signed corrected order.

Pending application(s), if any, also stand disposed of.

(SWETA BALODI)
COURT MASTER (SH)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)

(Signed corrected order is placed on the file)

ITEM NO.104

COURT NO.11

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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Appellant(s)

VERSUS

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Respondent(s)

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COURT MASTER (SH)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)

(Signed order is placed on the file)