

Mahalinga Shetty Vs. Krishnaraj

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Court : Karnataka

Decided On : Jan-31-1985

Reported in : ILR1985KAR2194

Judge : Nesargi, J.

Acts : Limitation Act, 1908 - Sections 148; [Limitation Act, 1963](#) - Sections 61

Appeal No. : RSA No. 700 of 1985

Appellant : Mahalinga Shetty

Respondent : Krishnaraj

Advocate for Def. : K.R.D. Karant, Adv. for R-1 and ;Padubidri Raghavendra Rao, Adv. for R-2 and ;K.T. Mohan, Adv. for R-11

Advocate for Pet/Ap. : B.P. Holla, Adv.

Disposition : Appeal dismissed

Judgement :

Nesargi, J.

1. This appeal is directed against the judgment and decree dated 31-1-1975 passed by the Principal Civil Judge, Udupi, South Kanara, in Appeal Suit No. 7 of 1963 reversing the Judgment and decree dated 10-10-1962 passed by the

Principal District Munsiff, Karkala, in O.S. No. 4 of 1959.

2. O.S. No. 4 of 1959 was instituted for redemption of two items of properties described in the schedule attached to the plaint. The suit was based on a deed dated 15-1-1839. That deed is marked as Exhibit A-13. It purports to have been executed by one Sri Padmanabha Bhatta in favour of two persons namely, Choodamma and Nagappa. The sum and substance of the plaintiffs' case was that the two items of properties were mortgaged to Padmanabha Bhatta and as on the date of the suit namely, 2-1-1959 they had the right to redeem the properties. Various contentions were raised by the defendants. The main contentions are that Exhibit A-13 is not a genuine document and the plaintiffs are put to strict proof of the same. Padmanabha Bhatta never executed such a document and hence the claim of the plaintiffs is bogus. The transaction entered into with Padmanabha Bhatta was an out and out sale and not a mortgage transaction. The rights of the parties got extinguished as on 15-1-1903 i.e., 64 years after 15-1-1839 the date of Exhibit A-13. The suit was barred by limitation.

3. The Trial Court held that Exhibit A-13 is a genuine document and that formal proof of the document was not called for in view of the presumption arising in favour of the plaintiffs under Section 90 of the Indian Evidence Act and that the transaction evidenced by Exhibit A-13 is mortgage by conditional sale. It is on this basis that it decreed the suit.

4. The Lower Appellate Court has no doubt produced a long judgment. By a devious process of reasoning, which may also be said as dubious, it has held that Exhibit A-13 is nothing but a copy and therefore Section 90 of the Indian Evidence Act would not be of any assistance to the plaintiffs. It has dismissed the appeal mainly on that ground.

5. Sri B.P. Holla, Learned Advocate appearing on behalf of the appellant, urged that Exhibit A-13 is a genuine document and in view of the fact that the material contained in Ex. A-13 and in fact the very document has been referred to in various subsequent documents, it will have to be held that it is a genuine document and that too in the original. He argued that this aspect of the matter has been brushed aside by the lower Appellate Court and contended that the presumption provided in

Section 90 of the Indian Evidence Act applies to this document. In this very connection, he argued that it would be very unreasonable to expect any witnesses to be examined in proof of the document of the year 1839, The next contention of Sri Holla is that reading of Exhibit A-13 itself shows that the transactions described therein particularly in regard to the two suit terms are nothing but mortgage transactions being made redeemable on the expiry of 64 years from the date of the document namely 15-1-1839. He further urged on this basis that the period of limitation would commence to run from 15-1-1903 and therefore the suit instituted on 2-1-1959 is very much within the period of limitation.

6. Sri K.R.D. Karanth, Learned Advocate appearing on behalf of the contending respondent-1, argued that Exhibit A-13 is not a genuine document and the reasoning of the lower appellate Court that it is a copy is sound. He nextly argued that even if it is for the sake of argument assumed that Ex. A-13 is a genuine document and is also a original document and therefore Section 90 of the Indian Evidence Act applies, the transactions concerning the two items as narrated in Exhibit A-13 can never be considered to be mortgages by conditional sale. He lastly argued that the period of redemption as fixed in Ex. A-13 is 40 years and not 64 years and therefore the period of limitation would commence immediately on the expiry of 40 years which would be from 15-1-1879 and as such the suit instituted on 2-1-1959 is very much barred by time.

7. In view of the foregoing, the following points arise for determination.

- 1) Whether Exhibit A-13 is a genuine document and is in original also ?
- 2) Whether the transactions relating to the suit schedule properties as narrated in Exhibit A-13 amount to mortgage transactions ?
- 3) Whether the suit filed on 2-1-1959 is barred by limitations?'

8. I consider it appropriate to deal with points 2 and 3 in the first instance assuming for the sake of argument that Exhibit A-13 is a genuine original document and the presumption available under Section 90 of the Indian Evidence Act applies to it and therefore in favour of the plaintiffs. What is narrated in Exhibit

A-13 is not in dispute. Ex. A-13 has been executed by Padmanabha Bhatta in favour of two persons Nagappa and his aunt Choodamma. In the first place it refers to earlier (may be on the very day) sale transaction concerning part of the area in mooli No. 2. Nextly it refers to part of the area in half share of mooli No. 2. Nextly it refers to the remaining half share in mooli No. 2 that had fallen to the share of Jodu Shetty who had mortgaged that in favour of Ancharu Subbraya. Thereafter it is narrated in Exhibit A-13 that the remaining half share in mooli No. 2 that fell to the share of Nagappa and Choodamma had been already mortgaged (simple mortgage) in favour of Padmanabha Bhatta and that during the previous year further charge had been created on that by taking certain amount. Thereafter transaction relating to the other item of suit properties which is described as geni No. 2, is described. It is stated that geni No. 2 described therein came to be mortgaged with possession to Padmanabha Bhatta by the said two persons Nagappa and Choodamma accepting 100 gadyanas out of which 50 gadyanas were to be appropriated towards this usufructuary mortgage. What is narrated further on is how Padmanabha Bhatta was to discharge certain obligations by way of paying some quantity of rice to Kallangana Brahmalinga Devaru etc. The most important part of the document is what is narrated hereinafter. In case Nagappa and Choodamma paid 50 gadyanas in a lump sum to Padmanabha Bhatta after 40 years and within 64 years from the date of the said deed, Padmanabha Bhatta would recover possession of the two items of properties without raising any contention about loss or profit. In case the said two persons fail to pay the said principal amount, they had no right to claim the properties. He would be at liberty to enjoy the properties according to his sweet will. Sri B.P. Holla argued that as per the recitals in Exhibit A-13 transaction in regard to part of the half share of mooli No. 2, the property that belonged to Nagappa and Choodamma was sold to Padmanabha Bhatta and consideration amount was received by them. Padmanabha Bhatta was to hand over possession of the suit properties to the two persons Nagappa and Choodamma on the two persons paying principal amount of 50 gadyanas in a lump sum after 40 years from that date and within 64 years from that date. On this basis he argued that if the description of 50 gadyanas as principal amount is taken into consideration with the further fact that even after 64 years, the amount made payable by these two persons remained the same

coupled with the further fact that Padmanabha Bhatta did not appear to have bound himself absolutely to hand over possession on receipt of this money after 40 years, it will have to be held that the alleged sale transaction was a transaction of mortgage by conditional sale. He pointed out, in regard to the other property namely, geni No. 2, that admittedly the transaction was mortgage with possession and that too self redeemable, the period being 40 years and therefore, there would be no doubt that the plaintiffs would be entitled to redeem at least this mortgage.

9. Exhibit A-13 is described as counter transaction to the sale transaction pertaining to an area in the half share of the property mooli No. 2. That necessarily leads to the conclusion that there must have been in existence another document describing the sale transaction of the said property by the vendors Nagappa and Choodamma in favour of Padmanabha Bhatta. Such a document is not forthcoming. Sri Holla argued that such a document must be in the possession of the defendants, but they have failed to produce it and hence an adverse inference may be raised.

10. What is to be particularly noticed in regard to mooli No. 2 is that the half share that Nagappa and Choodamma owned was already under mortgage to Padmanabha Bhatta. Thereafter, in the previous year, the said two persons had taken additional amount by creating further charge on the said property. Thereafter, may be on 15-1-1839 itself or earlier, possession of a part of the said property had been handed over to Padmanabha Bhatta under a document describing the transaction as transaction of sale. Therefore, in my considered opinion, the following inferences flow. Padmanabha Bhatta does not appear to have been willing to part with any more money on the basis of the simple mortgage as he had done in the previous year. He had insisted on possession of part of the property which was under simple mortgage, to him. He took possession of that part and paid an amount of 50 gadyanas to the said two persons describing the said transaction as sale transaction. That the said transaction was a sale transaction is reiterated in Exhibit A-13 wherein it is stated as follows :

What was done under Exhibit A-13 on the date of Exhibit A-13 was that usufructuary mortgage of the property geni No. 2 came to be created either on that

day or earlier. An amount of 50 gadyanas was to be recovered by Padmanabha Bhatta by enjoying the said property up to 40 years. Even for recovering possession of this property payment of 50 gadyanas in a lump sum by Nagappa and Choodamma was made a condition precedent. Payment of the said 50 gadyanas by Nagappa and Choodamma to Padmanabha Bhatta alone would entitle the two persons to have possession of both the properties namely, geni No. 2 which was self redeemable on the expiry of 40 years and part of the area in mooli No. 2 which was the subject matter of the earlier transaction described as sale. All these facts and circumstances outweigh the contention of Sri Holla that the amount of 50 gadyanas described as principal and it is further stated at the end of Exhibit A-13 as indicating that the transaction described as sale transaction in regard to part of the area in mooli No. 2 must be held to be mortgage by way of conditional sale. Hence my conclusions are that part of the area in the half share of Nagappa and Choodamma in mooli No. 2 was sold by the said two persons to Padmanabha Bhatta and Padmanabha Bhatta agreed to convey the same on receiving the consideration amount of 50 gadyanas after 40 years from 15-1-1839 and within 64 years from that day and also further agreed to hand over possession of the other property geni No.2. It is peculiar to notice that Padmanabha Bhatta has made it a condition, even in regard to handing over property geni No. 2 to the two persons after the expiry of the period of usufructuary mortgage that 50 gadyanas were to be paid in lump sum by the said two persons after 40 years and within 64 years from 15-1-1839.

11. The net result of what has been narrated and discussed in regard to Exhibit A-13 is that in case Nagappa and Choodamma desired to have possession of the said two items of properties, they had to wait for 40 years and thereafter, irrespective of geni No. 2 property having been self redeemable, pay 50 gadyanas in a lump sum within 64 years from 15-1-1839, If they failed to do so, they were not entitled to recover possession of even geni No. 2 property.

12. It would be too much to contend that the transaction in regard to geni No. 2 property was not an usufructuary mortgage transaction because Exhibit A-13 itself describes the transaction as such.

13. This takes me to the question of limitation. The transaction is of the date 15-1-1839, Transfer of Property Act came into force in the year 1892. In *Pattabhiramier v. Venkatarao Naicken*. The Judicial Committee has laid down that the doctrine of the English law with respect to the equity of redemption, after

default of payment of the mortgage money, is unknown to the ancient law of India prevailing in Madras, which, in the absence of any Regulation, or Act of the Legislature, altering such law, determines the interest of a Mortgagor, in favour of the Mortgagee under a conditional sale made absolute by failure of the Mortgagor to redeem at the time specified in the deed. It is further laid down unequivocally that the parties to such a transaction would be bound by the terms of the conditions or agreement. Though this was the law settled by the Privy Council, the Courts in India particularly at Madras and Bombay continued to apply the doctrine of English law of equity inasmuch as a series of decisions were rendered by the Madras High Court since 1858 and by the Bombay High Court since 1864. It appears that the observation made by the Privy Council, to be excerpted presently, has been made the basis for the said decisions.

'It must not, then, be supposed that in allowing this appeal their Lordships design to disturb any rule of property established by judicial decisions so as to form part of the Law of the Forum, wherever such may prevail, or to affect any title founded thereon.'

What had happened was *Pattabhiramier's* case remained pending in the Privy Council for 9 years though the Madras High Court had disposed of that case following the doctrine of English law of equity somewhere in the year 1860 and special leave was granted by the Privy Council in 1861. The Privy Council rendered the said decision on 9th and 10th of December 1870. During this period of 9 years, the Madras High Court continued to follow its own decisions and therefore since 1858 the doctrine of English Law of equity continued to be applied by the Madras High Court. It so happened that Bombay High Court also commenced applying that doctrine since 1864. In view of what was stated by the Judicial Committee as excerpted above, the doctrine of English law of equity continued to be applied on the reason that Their Lordships of the Privy Council

did not intend to disturb any rule of property established by judicial decisions. This aspect of the matter came up for judicial scrutiny before the Privy Council in *Thumbuswamy Moodelly- v. - Hossain Rowthen*. Their Lordships referred to *Pattabhiramier's* case and the other cases decided by the Madras High Court since 1858 and the Bombay High Court since 1864. The decision in *Thumbuswamy's* case was rendered by the Privy Council on 26-6-1875. On noticing these aspects, the Privy Council held as follows :

'On a stale claim to redeem a mortgage, and dispossess a mortgagee who had, before 1858, acquired an absolute title, there would be strong reasons for adopting the former course. In the case of a security, executed since 1858, there would be strong reasons for recognizing and giving effect to the Madras authorities, with reference to which the parties might be supposed to have contracted. Their Lordships abstain from expressing any opinion upon this question until the necessity for determining it shall arise. They deem it right, however, to observe that this state of the law is eminently unsatisfactory, and one which seems to call for the interposition of the Legislature.

An Act affirming the right of the mortgagor to redeem until foreclosure by a judicial proceeding, and giving to the mortgagee the means of obtaining such a foreclosure, with a reservation in favour of mortgages whose titles, under the law as understood before 1858, had become absolute before a date to be fixed by the Act, would probably settle the law, without injustice to any party.'

It is to be noted that no occasion appears to have arisen for Their Lordships of the Privy Council to express any opinion which they had abstained from expressing while deciding *Thumbuswamy's* case. The part that the Legislature played was by enacting, the Limitation Act of 1877. There was earlier Limitation Act of 1859. It is undisputed that as per the provisions of the Limitation Act of 1877 period for redemption of a mortgage was fixed as 60 years². ILR 1 (Madras) 1 from the date when the right to recover possession accrued to the mortgagor.

14. Now it is necessary to see whether the period fixed in Exhibit A-13 makes the period of limitation to commence from 15-1-1879 i.e., immediately after the expiry of 40 years or 15-1-1903 i.e., immediately after the expiry of 64 years from the

date of Exhibit A-13. Sri B.P. Holla, the Learned Advocate, argued that the words ought not to be considered as conveying any meaning so long as it is made clear in Exhibit A-13 itself that Choodamma and Nagappa were entitled to recover possession within 64 years from the date of Exhibit A-13. He further urged that what is to be understood by the words 'within 64 years' is on the expiry of 64 years. In support of this contention he relied on judicial pronouncements of Bombay High Court, Allahabad High Court, Privy Council and Supreme Court. In *Vadju- v. - Vadju*, it is laid down as follows:

'The general principle as to redemption and foreclosure is that, in the absence of any stipulation, express or implied, to the contrary, the right to redeem, and the right to foreclose are co extensive.'

In the said case the mortgage deed was dated 30th April, 1870. It stipulated that the mortgagor would pay the debt, with interest, within ten years and redeem the mortgaged property. The mortgagor instituted the suit on 30th July, 1877 for redemption of the property. The mortgagee contended that the time had not expired. Their Lordships held that the words 'within ten years' did not entitle the mortgagor to redemption of the property before the expiry of the period of ten years. His right to redeem accrues only on the expiry of the period of ten years and therefore the suit was premature.

15. In my opinion, it would not be out of place to note that the decision also lays down that any stipulation express or implied to the contrary is open to be agreed upon by the parties and if such stipulation is agreed upon, the parties would be bound by it. In the decision in *Bakhtawar Begam- v. - Husaini Khanum* the words considered by the Privy Council were 'might redeem at any time within nine years.' It was held that the debt should remain outstanding for nine years certain, but on facts pleaded in the plaint itself. Their Lordships found that even according to the plaintiffs the whole debt had become satisfied by 4-9-1837 to 4-9-1838. Their Lordships further held that the period of limitation commenced to run from that date and therefore the suit was barred by limitation. As already pointed out, Sri Holla has relied on this decision to show that the Privy Council also has construed such an expression namely, within nine years as on the expiry of the period of nine

years unless it is shown to be otherwise.

16. In the decision in *Shiam Lal - v. - Jagdamba* the decision in I.L.R. 5 (Bombay) P. 22, has been followed. It has been held as follows:

'The mere use of the words *andar miyad* in the mortgage deed is not enough to evidence a contract to the effect that the mortgagor is given a right to redeem before the expiry of the stipulated period for which the mortgage is effected.'

In the decision in *Akbar Husain - v. - Shah Ahsanul Haq* it has been held in regard to a similar term that the term that mortgagor would be entitled to redeem within specified number of years means that he can redeem and mortgagee can foreclose after expiry of that term.

17. Here again, it would not be, in my opinion, out of place to point out that it has been also laid down in this decision as follows :

'It is no doubt open to the parties to fix two different dates for the enforcement of the right of the mortgagor and the mortgagee respectively.'

18. In the decision in *Ganga Dhar - v. - Shankar Lai* the Supreme Court has relied on the decision in A.I.R. 1914 Privy Council page 36. The usufructuary mortgage deed in question was executed in 1899. The period for redemption was fixed as 85 years. The relevant term in the deed was as follows:

' I or my heirs will not be entitled to redeem the property for a period of 85 years. After the expiry of 85 years we shall redeem it within a period of six months.'

A suit was brought for redemption before the expiry of 85 years and it was held that the suit was premature. It has been also laid down that the period of limitation commences to run on the expiry of 85 years.

19. Here again it is to be noted that though, according to the term, further period of six months after the expiry of the period of 85 years was provided, the period of limitation is held to have commenced immediately on the expiry of the period of 85 years. Sri Holla pointed out that in paragraph 9 of the Judgment Their Lordships appear to have left 'this aspect of the matter open by expressing that the case was

not really concerned about that term. This makes me to refer to what Their Lordships have stated in paragraph 8.

'Under the Section once the right to redeem has arisen it cannot be taken away. The mortgagor's right to redeem must be deemed to continue even after the period of six months has expired. and the attempt to confine that right to that period must fail.'

Their Lordships further on held that the period of six months restricting exercise of the right by the mortgagor would be invalid apparently because it would be clog on redemption.

20. In the decision in Mohammad Khan - v. - Mohammad Salim the term in the deed dated 1-8-1878 was that if the7. : [1959]1SCR509 8. : AIR1951 All392 money was not paid within 4 years, the mortgagee could enter into possession of the mortgaged property and would pay the land revenue. The fact was that the money was not paid within the period fixed namely 1-8-1882. It was held that the period of limitation for redemption would start from 1-8-1882 and as such the application for redemption made on 21-8-1946 was clearly beyond 60 years and barred by Article 148 of the Limitation Act, 1908. Here again it is seen that the words 'within four years' have been interpreted as on the expiry of the period of four years.

21. Sri Holla strenuously argued that in spite of the words used in Exhibit A-13, the intention of the parties to Exhibit A-13 is made absolutely clear that Nagappa and Choodamma had a right to have back possession of the properties within 64 years from the date of the deed and therefore the period of limitation would commence only on the expiry of 64 years namely from 15-1-1903. On the other hand, Sri K.R.D. Karanth argued that taking into consideration Exhibit A-13 as a whole and the narrations contained in it in their proper context, the intention of the parties is more than clear to show that the terms agreed upon were Nagappa and Choodamma could have possession of the two items of properties only on payment of 50 gadyanas in a lump sum and that too after 40 years and not before 40 years and that they could exercise that right before the expiry of 64 years. He urged that clearly the parties have stipulated that the period for redemption would be expiry of

40 years and the period for foreclosure would be expiry of 64 years. Sri Holla replied that in case the transaction referred to as transaction of sale in Exhibit A-13 is regarded as an absolute sale, no question of foreclosure arises in respect of the property geni No. 2 as it is the subject matter of usufructuary mortgage and that too self redeemable on the expiry of the period of 40 years and hence it is not possible to understand that the intention of the parties was that so far as the period for foreclosure was concerned, it was on the expiry of 64 years.

22. Before going into this aspect, it would, in my opinion, be appropriate to deal with one more contention. It has been noticed that the Privy Council has in *Thumbuswamy Moodelly's* case laid down that in regard to transactions entered into prior to 1858 and the right had accrued, the law laid down in *Pattabhiramier's* case would be applicable and in regard to transactions dated beyond 1858 so far as Madras is concerned and beyond 1864 so far as Bombay is concerned, there would be strong reasons in support of the doctrine of English Law of Equity as laid down in the later decisions being applied, Sri Holla argued that under Exhibit A-13 which has been entered into prior to 1858 no proprietary right was acquired by Padmanabha Bhatta prior to 1858 as even the minimum period of 40 years fixed would expire only in 1879 and therefore the doctrine of English Law of Equity ought to be applied. However, Sri K.R.D. Karanth argued that the law laid down in *Pattabhiramier's* case was that the parties would be bound by the terms agreed upon between them and that the doctrine of English Law of Equity was not applicable in this country and therefore it is only the date of the transaction that has to be taken into consideration because it is at that stage that the intention of the parties would be expressed in the deed. This argument has, in my opinion, much force in it. When the stress is to find out what the intention of the parties is, then it necessarily follows that it is the date of the transaction and not the rights that would have been acquired after the expiry of a particular period that matters. Anyhow, I am clearly of opinion that this aspect of the matter would not be of much consequence in this case.

23. It has been already noticed that the Bombay High Court has in *I.L.R.5 (Bombay) P.22* laid down that it was open to the parties to bind themselves to any stipulation in an express manner or an implied manner contrary to the general

principle as to the redemption and foreclosure. It has been specifically held in Akbar Husain vs. Shah Ahsanul Haq that it is open to the parties to fix two different dates for the enforcement of the right of the mortgagor and the mortgagee respectively. It is in this connection that the decision in Vidya Datta- v. - Jagmandar Das requires to be looked into. The mortgage concerned in that case was executed on 29-8-1931 payable in 8 years. There was a definite stipulation in the mortgage deed that for the first four years the mortgagors could not redeem the mortgage. It was held that the period of limitation commenced to run on the expiry of four years and not the expiry of eight years. Reference has been made to the decisions in Lasa Din vs, Mt.Gulab Kunwar and Shiam Lal - v. - Jagdamba Prasad what has been laid down in the decision in A.I.R. 1928 Allahabad P.131 has been already noticed. Such a term stipulating that the mortgagor was not entitled to redeem until the expiry of four years was not available in the facts of that decision. It is because of that S.N.Singh, J., who rendered the decision in Vidya Datta's case has expressed that the principle of law laid down in that case cannot be applied. I respectfully agree with him. In the decision in Lasa Din- v. - Mt. Gulab Kunwar the mortgagee had filed the suit for foreclosure. The stipulation was that the mortgage of 1912 was to become due in 1918 and interest was to be paid annually and in default of payment of interest in any one year the creditor would be entitled to realise the entire mortgage money with interest at once. The facts were, no interest were paid. The mortgagee filed the suit on the expiry of the period in 1918. The contention was that the suit was barred by limitation. It was held that the default clause was a clause for the benefit of the mortgagee and his9. : AIR1969 All31 10. suit, filed on the expiry of the period stipulated, was within the period of limitation.

24. As already pointed out, the reading of Exhibit A-13 (assuming that it is genuine and is in original and therefore Section 90 of the Indian Evidence Act applies) it is clear that Nagappa and Choodamma were not entitled to possession of the two items of properties upto 40 years from the date of the deed namely, 15-1-1839 and could exercise their right to recover possession on the expiry of 40 years and further could continue to exercise that right till the expiry of 64 years from the date of the deed. Therefore, the parties have stipulated expressly that Choodamma and Nagappa did not have the right to recover possession for 40 years. Even if Exhibit

A-13 is considered to represent a mortgage transaction, Choodamma and Nagappa could not exercise their right of redemption until the expiry of 40 years. When such is the express stipulation it falls within the exception laid down in I.L.R. 5 (Bombay) P. 22 and : AIR1932 All155 and therefore the principle laid down in : AIR1951 All392 and : AIR1969 All31 would be applicable. Expiry of 40 years from 15-1-1839 takes us to 15-1-1879. The law of limitation applicable as on that date was as provided by the Limitation Act of 1877. In the decision in Beepathumavs.Shankaranarayana it is laid down that the law of limitation being a procedural law, the provisions existing on the date of the suit apply to it. Sri B. P. Holla argued that the suit having been filed on 2-1-1959, the provisions of the Limitation Act, 1908 would be applicable. The period of limitation fixed by this Act for redemption of mortgage is 60 years from the date on which the right accrues to the mortgagor. That period was the same as was found fixed in the Limitation Act, 1887. Therefore, it will have to be held that by 2-1-1959 the rights11. : [1964]5SCR836 of the parties had become extinguished. When that is so, the suit of the plaintiffs has to fail.

25. In view of the conclusions on points, Nos. 2 and 3 I consider it unnecessary to deal with point No. 1.

26. In view of the foregoing and not for the reasons narrated by the lower Appellate Court, the suit of the plaintiffs fails and the decree passed by the lower Appellate Court has to be confirmed. Hence, the appeal is dismissed.

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