Chuni Vs. Smt. Tulsi

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SooperKanoon Citation : sooperkanoon.com/632353

Court : Punjab and Haryana

Decided On : Oct-17-2002

Reported in : (2003)133PLR353

Judge : Amar Dutt, J.

Acts : Redemption of Mortgages (Punjab) Act, 1913 - Sections 4 and 12; Code of Civil Procedure (CPC) - Sections 115

Appeal No. : Civil Revision No. 3526 of 1993

Appellant : Chuni

Respondent : Smt. Tulsi

Advocate for Def. : J.R. Mittal, Sr. Adv. and; K.K. Garg, Adv.

Advocate for Pet/Ap. : L.N. Verma, Adv.

Disposition : Petition dismissed

Judgement :

Amar Dutt, J.

1. The petitioner seeks to challenge the order dated 11.8.1993 passed by the Sub Judge 1st Class, Sirsa, deciding issue No. 4 against the petitioner and calling upon the respondent to lead evidence in relation to other aspects of the case.

2. The facts leading to the framing of issue No. 4 are that on 2nd of June, 1961, the respondent had mortgaged land in dispute measuring 24 Kanals with the petitioner. The respondent had, on 8th of May, 1991, moved an petition under Section 4 of the Redemption of Mortgages (Punjab) Act, 1913 (hereinafter referred to as 'the 1913 Act') before the Collector for redeeming the land and getting its possession. This application was dismissed on 31st of July, 1992, which order was challenged in the Civil Court through the present suit, as per the provisions of Section 12 of the 1913 Act. The trial Court, as already indicated, had allowed the application where upon the petitioner had filed the present revision.

3. The short point, which has been urged before me, is that the respondent was entitled to move an application for redemption within 30 years of the mortgage. This application was dismissed whereupon a suit had been filed as per the provisions of Section 12 of the 1913 Act. This suit for setting aside the order, which was filed on 7.10.1992, could be filed within one year of the dismissal of the application of the respondent but this limitation would not enlarge the period given in Article 61 of the Limitation Act for filing of a redemption suit i.e. 30 years. This proposition is assailed by the respondent's counsel on the ground that the relief, which the respondent was seeking, was for declaration of her rights after the rejection of the application filed under Section 4 of the 1913 Act. This suit having been filed within the limitation prescribed. There was no ground for rejection of the respondent's stand.

4. I have heard Shri L.N. Verma, on behalf of the petitioner and Shri J.R. Mittal, Sr. Advocate, on behalf of the respondent and with their assistance have gone through the record of the case.

5. The facts, in this case, are not in dispute. As already indicated by me, the application under Section 4 of the 1913 Act, which was filed on 8.5.1991 was dismissed on 31.7.1992. The order of dismissal has been challenged in a suit on 7.10.1992. The objection of the petitioner is that though this suit may have been filed within the period prescribed under the 1913 Act, the same had also to be filed within a period of 30 years, which would be the limitation, within which the mortgage could have been redeemed.

6. Though the argument, which has been put forth on behalf of the respondent for sustaining the decision of the trial Court to proceed with the suit after deciding issue No. 4 in favour of the plaintiff appears to be attractive and in the absence of judicial precedent may have been accepted by me but the same cannot be sustained when examined in the light of the decisions in Shiv Lal and others v. Chetram and Ors., A.I.R. 1971 Supreme Court 2342; Padmawati v. Ham Raj and Ors., 1975 P.L.J. 83 and Prem Kaur v. Prem Singh and Ors. 1984 P.L.J. 402.

7. Their Lordships of the Apex Court, while dealing with the scope of Section 12 of the 1913 Act observed as under:-

'This section merely provides that a summary order made under Sections 6, 7, 8, 9, 30 and 11 of the Redemption of Mortgages (Punjab) Act. 1913 becomes final unless a suit to establish the rights of the mortgagors is instituted within the prescribed period. From this provisions we are unable to hold that in view of that section, theperiod of limitation fixed for redemption of mortgages can be enlarged. Several decisions of the Lahore High Court holding that if a suit as required by Section 12 is not filed within the time prescribed then the right of redemption will be lost even if the time prescribed under the Limitation Act for instituting a suit for redemption has not expired. It is not necessary to go into the correctness of these decisions though prima facie we are inclined to accept their correctness because they merely lay down that if any party aggrieved by an order under Sections 6, 7, 8, 9, 10 and 11 of the Redemption of Mortgages (Punjab) Act. 1913 does not institute a suit to establish his rights in respect of the mortgage within the time prescribed, his right to sue for redemption is lost. Those decisions do not support the contention of the plaintiffs that a mortgagor whose application for redemption under Section 4 of the aforesaid Act is dismissed can file a suit for redemption of the mortgage even though the limitation prescribed for such a suit had expired, if only he filed that suit within a period of one year from the date of the order dismissing his petition under Section 4. No decision taking that view was brought to our notice. What is made conclusive by Section 12 is the order made by the Collector if the suit as contemplated by Section 12 is not instituted within the prescribed time. That provision does not lend any support for the contention that if an application which fulfills the requirement of S.4 is brought then the period of limitation prescribed for a redemption suit becomes irrelevant.'

8. Relying on this judgment, this Court had in Padmawati's case and Prem Kaur's case (supra) also taken the view that not only does the application under Section 12 of the 1913 Act had to be filed within one year of the decision of the application under Section 4 of the 1913 Act but it has also to be filed within the period of limitation provided for redemption of a mortgage. In view of the law settled in Shiv Lal 's case (supra), there was no scope for the Court below to have come to any other conclusion and the effort made by it to do so is a blend of gross in-discretion and judicial impropriety, which cannot be sustained and has to be set aside.

9. For the reasons recorded above, the revision petition is allowed and the impugnedorder is set aside and the suit dismissed as barred by limitation.