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REET MOHINDER SINGH SEKHON

v.

MOHINDER PARKASH & ORS.

JULY 31, 1989

B [SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

Limitation Act 1908: Suit for redemption of mortgage-limitation period.

Limitation Act, 1963: Sections 19 and 30—When recital in sale deed constitutes an acknowledgment for computation of period of
C *limitation.*

The appellant is the successor in interest of the mortgagor of the suit property. The suit property was mortgaged on 22.5.1886. In the normal course the suit for redemption should have been filed on or
D **before 22.5.1946, the limitation for such a suit being 60 years under the Limitation Act, 1906. The appellant, however, filed the suit for redemption only on 28.12.1968. The defence to the plea of limitation urged was that the son of the original mortgagee, while selling the property on 1.11.1913, had specifically acknowledged the right of the mortgagor to redeem the property. It was claimed that this acknow-**
E **ledgment constituted a fresh starting point for computing the period of limitation. The Trial Court accepted the plea and granted decree for redemption. The Additional District Judge however accepted the appeal of the respondents. The High Court, in appeal, confirmed the order of the Additional District Judge and held that the sale deed had nowhere acknowledged the right of the mortgagor to redeem the land.**

F **Before this Court, it was contended on behalf of the appellant that the recital in the sale deed clearly contained a specific acknowledgment by the mortgagee of a subsisting right of redemption in the mortgagor. On the other hand, it was contended that the said recital did not serve as an acknowledgment. It was further urged by the respondents that**
G **even otherwise the suit should have been filed within 7 years of the coming into force of the Limitation Act, 1963, i.e., on or before 1.4.1971, and that it was actually instituted only on 18.4.1973.**

Allowing the appeal, setting aside the orders of the Additional District Judge and the High Court, and restoring the decree for
H **redemption passed by the Trial Court, this Court,**

HELD: (1) The period of limitation cannot be extended by a mere passing recital regarding the factum of the mortgage but the statement on which the plea of an acknowledgment is based must relate to a subsisting liability. The words used must indicate the jural relationship between the parties and it must appear that such a statement is made with the intention of admitting such jural relationship. [613G-614A]

Tilak Ram **v.** *Nathu,* **AIR 1967 S.C. 935, referred to.**

(2) In the instant case, it is not correct to treat the recitals in the document as a mere narration of the previous mortgage that had been created on the property. The words spell out a clear intention that the moneys due under the mortgage still remained unpaid and also that the mortgagor had a subsisting right of redemption which he could enforce against the mortgagee. [614E-F]

(3) In the Trial Court the plaintiff-appellant had adverted to the provisions of the Limitation Act, 1963 and the position that the suit should have been filed within 7 years of the application of the new Act, and had urged that the suit was within time. The Trial Court had accepted the contention of the plaintiff-appellant on this point. It could not have been so accepted if the suit had in fact been instituted only in 1973. In the cause title of the suit in the Trial Court the date of institution is set out as 28.12.1968/18.4.1973. This position does not appear to have been specifically challenged either in the Trial Court or in the first Appellate Court. The High Court in its judgment has pointed out that the suit had been filed on 28th of December, 1968. In this state of the record, this Court has to proceed on the basis that the suit had been filed on 28th of December, 1968 and therefore to hold that the suit had been filed in time. [615B-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3108 of 1989.

From the Judgment and Order dated 27.1.86 of the Punjab and Haryana High Court in R.S.A. No. 1510 of 1977.

Harbans Lal and Ashok K. Mahajan for the Appellant.

Jitender Sharma for the Respondents.

The Judgment of the Court was delivered by

RANGANATHAN, J. We grant leave in the Special Leave Peti-

A tion and proceed to dispose of the appeal on the merits after hearing both sides.

The appellant is the successor in interest of the mortgagor of the suit property. The suit property was mortgaged on 22.5.1886. In the normal course the suit for redemption should have been filed on or B before 22.5.1946, the limitation for such a suit being 60 years under the Limitation Act, 1908. The appellant, however, filed the suit for redemption only on 28.12.1968. He sought to meet the plea of limitation by urging that the son of the original mortgagee, while selling the property on 1.11.1913, had specifically acknowledged the right of the mortgagor to redeem the property. It was claimed that this acknowledgment constituted a fresh starting point for computing the period of C limitation.

If the plea of the mortgagor were right and the Limitation Act, 1908, had continued to be operative, the suit for redemption could have been filed on or before the Ist of November, 1973. However, in D the meantime the Limitation Act, 1963 replaced the Limitation Act of 1908. The period of limitation for a suit for redemption was reduced under the new Act to 30 years. Section 30 of the Act, however, provided as follows:

> S. 30. Provision for suits, etc., for which the prescribed E period is shorter than the period prescribed by the Indian Limitation Act, 1908.
>
> Notwithstanding anything contained in this Act—
>
> (a) any suit for which the period of limitation is shorter F than the period of limitation prescribed by the Indian Limitation Act, 1908, may be instituted within a period of seven years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier:
>
> G xxx xxx xxx

By virtue of this provision, the suit for redemption could have been filed, if the appellant's plea that the sale deed dated 1.11.1913 constituted a fresh starting point for computation of the period of limitation is accepted, on or before the Ist of January, 1971, having regard to H the fact that the Limitation Act. 1963 came into force on 1.1.1964.

The first question for consideration in this appeal is whether the sale deed of 1.11.1913 contained an acknowledgement by the original mortgagee of a subsisting right of redemption on the part of the mortgagor as on the date of the sale deed viz. 1.11.1913. The sale deed contained the following recitals:

> "Now I of my own accord have sold all my mortgagee rights along with the original mortgage consideration and interest which according to the terms of the aforesaid mortgage deed has accrued and is payable to the instant vendor ..... The rights and interest regarding recovery of original mortgage money and interest according to mortgage deeds executed by Jangi Khan original mortgagor deceased *and redemption* of the mortgaged land which hence to fore vested in the instant vendor stand vested in the purchaser .....
>
> (underlining by us)

On behalf of the appellants it is submitted that the words extracted above clearly contained a specific acknowledgement by the mortgagee of a subsisting right of redemption in the mortgagor. On the other hand, for the respondents, it is contended—and this contention was accepted by the High Court—that the recitals mentioned above do not serve as an acknowledgment. The High Court observed:

> "The mortgagee Mool Raj gave the description of the mortgage only with a view to showing his status but nowhere did he acknowledge his liability for redemption of the mortgage. According to the recital in the deed, whatever rights as a mortgagee he had in the suit land were transferred to the vendee. There was nothing more than this. The right of the mortgagor to redeem the land, and his liability to redeem the same, was nowhere acknowledged."

The respondents strongly rely on this finding and also rely on the decision of this court in *Tilak Ram* v. *Nathu,* AIR 1967 S.C. 935.

We are of the opinion that the High Court erred in accepting the above contention. It is true, as pointed out in *Tilak Ram* v. *Nathu,* that the period of limitation cannot be extended by a mere passing recital regarding the factum of the mortgage but that the statement on which the plea of an acknowledgement is based must relate to a subsisting liability. The words used must indicate the jural relationship between

A the parties and it must appear that such a statement is made with the intention of admitting such jural relationship. But, in our opinion, the recitals in the sale deed on 1.11.1913 fulfil the above requirements. The fact of Nanak Chand having obtained a mortgage with possession had already been recited in an earlier part of the sale deed. The passages in the sale deed, which have been extracted by us above, contain
B two specific recitals. The first is that "the original consideration and interest under had accrued and was payable to the instant vendor." These words acknowledge that the mortgage had not been redeemed and that the mortgage moneys remained outstanding to the mortgagee from the mortgagor as on the date of the sale deed. The second recital is even more specific. It says that what stands transferred to the pur-
C chaser is not only the right of the mortgagee for recovering the principal amounts and interest according to the mortgage deed (which, as earlier stated, still remained outstanding) but also "the rights and interest" regarding the redemption of the mortgaged land. These words are, of course, a little inappropriate because the right of redemption is in the mortgagor and not in the mortgagee. But, read as
D a whole, the second sentence we have quoted here from the sale deed clearly manifests an intention on the part of the mortgagee to acknowledge that his right to recover the moneys under the mortgage deed as well as his liability to have the property redeemed by the mortgagor in the event of his paying off the moneys due under the instrument both stand vested in the purchaser. We are of the opinion
E that it is not correct to treat the recitals in the document as a mere narration of the previous mortgage that had been created on the property. The words spell out a clear intention that the moneys due under the mortgage still remained unpaid and also that the mortgagor had a subsisting right of redemption which he could enforce against the mortgagee. In this view of the matter the contention on behalf of the
F appellant that the recitals in the document of 1.11.1913 constituted an acknowledgement of liability for redemption within the meaning of section 19 of the Limitation Act deserves to be accepted.

On behalf of the respondents it is submitted that, even if the above position is accepted, the suit should have been filed on or before
G 1.4.1971 but that it was actually instituted only on 18.4.1973. Our attention is drawn to the cause title of the suit in the trial court where the suit is described as Case Civil Suit No. 204 of 1973 and the date of institution is set out as 28.12.1968/18.4.1973. It is submitted that perhaps the suit had been filed on 28.12.1968 with defects and that the defects had been rectified subsequently so that the suit can be properly
H said to have been instituted only on 18.4.1973. It has been numbered

only as a suit of 1973. It is, therefore, contended that in any event the suit was barred by limitation being beyond 1.4.1971. This contention is without force. This point does not appear to have been specifically taken either in the trial court or in the first appellate court. On the other hand in the trial court the plaintiff had adverted to the provisions of the Limitation Act and the position that the suit should have been filed within 7 years of the application of the new Act and urged that the suit was within time. This contention was accepted by the trial court. It could not have been so accepted if the suit had in fact been instituted only in 1973 as at present submitted. That apart the High Court in the course of its judgment has pointed out that the present suit had been filed on 28th of December, 1968. In this state of the record we have to proceed on the basis that the suit had been filed on 28th of December, 1968, and, therefore hold, for the reasons stated earlier, it had been filed in time.

A B C

For the reasons above mentioned, we set aside the order of the High Court confirming the order of the Additional District Judge and restore the decree for redemption passed by the trial court. We would only like to clarify that there were two mortgage deeds the redemption of whch had been sought by the plaintiff in the suit. We are concerned in this appeal only with the property mortgaged under the deed of mortgage dated 22.5.1986 by Jangi Khan in favour of Nanak Chand and sold on 1.11.1913 by Mool Raj, son of Nanak Chand, to the predecessor-in-interest of the present respondent. The concurrent findings of the three courts in respect of the other mortgage are not, in any way, disturbed by our judgment.

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The appeal, therefore, stands allowed and the appellant will be entitled to his costs.

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R.S.S. Appeal allowed.