

MANU/BH/0013/1987

Equivalent Citation: AIR1987Pat129, 1986PLJR1026

**IN THE HIGH COURT OF PATNA
FULL BENCH**

C.W.J.C. Nos. 1973 and 3442 of 1979 and 1064 and 1353 of 1981

Decided On: 05.09.1986

Appellants:**Raghunandan Rai and Ors.**

Vs.

Respondent:**State of Bihar and Ors.**

Hon'ble Judges/Coram:

S.S. Sandhawalia , C.J., L.M. Sharma and S. Ali Ahmad , JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: S.C. Ghose, Sukumar Sinha, Ashok Kumar Singh, Shashi Shekhar Dwivedi and Narmdeshwar Pandey, Advs.

For Respondents/Defendant: Sheo Kumar Singh, A.K. Singh "Chauhan", Mahendra Prasad Pandey and Ganapati Trivedi, Advs.

JUDGMENT

S.S. Sandhawalia, C.J.

1. Whether a mortgage must be a subsisting one on the date of the enforcement of the Bihar Money Lenders Act, 1974 in order to attract the provisions of statutory redemption under Section 12 thereof -- is the significant common question in this set of four cases referred for hearing by a Full Bench. Pointedly at issue is the correctness of the earlier Division Bench decision in Ram Rup Kuer v. State of Bihar 1978 BBCJ (HC) 282 holding so in the affirmative.

2. In an issue so pristinely legal the facts inevitably recede to the background. Nevertheless the skeletal ones only may be noticed to provide the terra-firma for the aforesaid common question involved in these cases. These may be noticed from C.W.J.C. 1973/79 (Raghunandan Rai v. The State of Bihar and others). Way back on the 14th of May, 1943 the mortgage was created of a tenure right which included some bakasht land. Respondents 4 and 5 preferred an application under Section 12 of the Bihar Money Lenders Act (hereinafter called the 'Act') before the Land Reforms Deputy Collector, Bettiah. On the 15th of September, 1975 notice thereof was issued to the petitioner and a detailed rejoinder was filed (vide Annex 2). The Land Reforms Deputy Collector by an exhaustive order (Annexure 4) dated the 31st of July, 1978 found the application not maintainable and dismissed the same. Aggrieved thereby the said respondents preferred an appeal to the Collector, West Champaran, who allowed the same (vide Annexure 5 dated the 11th of June, 1979). The challenge in the writ petition is primarily directed against the said order.

3. This case came up for hearing before a learned single Judge when it was pointed out that the identical point arising herein had been referred to a Full Bench in C.W.J.C. 3442 of 1979, (Badri Nath Dubey and another v. State of Bihar and others) and consequently it was directed to be heard along with the same. The order of

reference in the aforesaid case noticed the earlier view in *Ram Rup Kuer v. State of Bihar* 1978 BBCJ282 and *Nand Lal Thakur v. State of Bihar* 1980 BBCJ455 holding that if on account of the lapse of time or conduct of parties the right, title and interest of the mortgagor in the property has been extinguished prior to the coming into force of the Act then the question of redemption and recovery of possession under Section 12 thereof would not arise. Apparently casting some doubt on the said view, it was observed that the same needs reconsideration by a larger Bench, and the cases were referred to a Full Bench. The other connected cases have also been similarly referred on the identical issue of law, and that is how they are before us now.

4. In assailing the view in *Ram Rup Kuer v. State of Bihar* 1978 BBCJ282, learned counsel first highlighted Section 12 of the Act as a beneficial legislation directly intended to give relief to agriculturists from the tentacles of usurious moneylenders. Relying on the non obstante clause with which the section begins, it was submitted that this would override the provisions of all other laws including those of the Limitation Act. Pinning himself with some literalism on the language of the section, it was argued that it applies to all usufructuary mortgages before or after the commencement of the Act irrespective of any qualification of time. Somewhat tenuously, the suggestion also was that in case it is held that Section 12 will apply only to subsisting mortgages, then the result will be that there will be no mortgage subsisting after seven years of its execution and, therefore, no application for restoration of the mortgage could be filed.

5. Inevitably, the issue here has to turn around the language of the statute and, therefore, the provisions of the relevant part of Section 12 of the Act may be read at the very outset: --

"12. Usufructuary mortgages and their redemption.-- Notwithstanding anything to the contrary contained in any law or anything having the force of law or in any agreement, the principal amount and all dues in respect of a usufructuary mortgage relating to any agricultural land, whether executed before or after the commencement of this Act, shall be deemed to have been fully satisfied and the mortgage shall be deemed to have been wholly redeemed on expiry of a period of seven years from the date of execution of the mortgage bond in respect of such land and the mortgagor shall be entitled to recover possession of the mortgaged land in the manner prescribed under the rules.

6. To my mind, it seems somewhat unnecessary and indeed it would be wasteful to launch an exhaustive dissertation on principle because of the fact that the question appears to be well covered by the precedent within this Court. It suffices to mention that the Division Bench in *Ram Rup Kuer v. State of Bihar* (1978 BBCJ282) (*supra*), after considering the issue on the language of the statute, the relevant provisions of the Limitation Act and, in particular, Section 27 thereof and after reference to precedent, concluded in no uncertain terms as follows : --

".....On its plain reading, before Section 12 can operate, a mortgage must subsist so as to enable the mortgagor to recover possession of the land in question after statutory redemption. If due to lapse of time or by conduct of the parties the right, title and interest of the mortgagor in the property in question has been extinguished prior to coming into force of the provisions of the Money Lenders Act, in my view, there is no question of redemption of

such a mortgage and recovery of possession of the land once mortgaged. The right of redemption having become barred under the Limitation Act, the right, title and interest of the mortgagor in the property, itself will be deemed to have been extinguished. In such a situation, in my opinion, the mortgage itself does not subsist, so as to attract the provisions of Section 12 of the Money Lenders Act."

7. Now, learned counsel for the parties, supporting the view aforesaid, had attempted to contend that the same has now received the seal of approval by the later Full Bench decision in *Dorik Mahto v. State of Bihar* 1980 BBCJ 54 : (MANU/BH/0038/1980 : AIR 1980 Pat 163). Primal reliance was placed on the observations of Mr. Justice H.L. Agrawal in the said judgment. This stand, however, does not appear to be correct. It is true that in the said case the learned Judges, who had referred the case to the larger Bench, had cast a doubt on the case of *Ram Rup Kuer v. State of Bihar* (supra) and opined that the provisions, of the Limitation Act do not apply in such cases. However, in the Full Bench, Agrawal, J. forthrightly observed that on the facts of that case, there was no question of applying the ratio of the case of *Ram Rup Kuer v. State of Bihar* (supra) and also noticed that the learned counsel appearing for the parties had not supported the views expressed by the learned Judges of the referring Bench. Nevertheless, he very briefly indicated his concurrence with the said view. AH Ahmad, J. categorically noticed that the correctness or otherwise of the view in the case of *Ram Rup Kuer v. State of Bihar* (supra) did not arise in that case and declined to express any opinion about the same whilst the other learned Judge, S. Narain, J. did not even remotely advert to the issue. It is thus, somewhat plain that *Dorik Mahto v. State of Bihar* (supra) cannot be strictly deemed as an affirmance or adoption of the view in *Ram Rup Kuer v. State of Bihar* (supra).

8. Now, on an analysis of the matter, it appears to me that the ratio in *Ram Rup Kuer v. State of Bihar* (1978 BBCJ 282) (supra) is firmly rooted on the larger principle contained in Section 27 of the new Limitation Act: --

"27. Extinguishment of right to property. --At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."

The plain language of the above contains the hallowed rule which had earlier held the field by virtue of Section 29 of the old Limitation Act. By the determination of the period of limitation not merely is the legal remedy barred but in fact the very right stands extinguished. Therefore, when the redemption of a mortgage is barred by the provisions of the Limitation Act, it is not merely that the remedy of recovering possession is lost but the very right of redemption stands extinguished with the consequential result that the mortgage ceases to exist altogether. It is unnecessary to multiply precedents on this point and it would suffice to notice-that within this jurisdiction way back in MANU/BH/0048/1942 : AIR 1943 Pat 289, (*Bisheshwar Dass v. Sashinath Jha*) this view was authoritatively enunciated. Significantly, this has now received the seal of approval by the final Court itself in MANU/SC/0419/1978 : AIR 1978 SC 941, (*Yeshwantrao Laxmanrao Ghatge v. Baburao Bala Yadav (dead) by L.R.'s*). Therein what fell for consideration was Section 52-A of the Bombay Public Trusts Act which also opened with the non obstante clause. Nevertheless, their Lordships observed : --

".....The effect of Section 28 of the Limitation Act was that right to the

property was extinguished resulting in conferment of a title by adverse possession on the persons in possession of the concerned properties. It is well-known that the effect of Section 28 of the Limitation Act is not only to bar the remedy but also to extinguish the right. The right to the property itself was dead and gone. It could not be revived by a provision like the one contained in Section 52-A of the Act."

And again,

".....But then the overriding effect of S. 52-A will have its play and operation, only if, by the time it came into force, Section 28 had not extinguished the right to the property in question. Otherwise not....."

9. The aforesaid authoritative enunciation, to my mind, sets the seal of approval on the ratio in the case of *Ram Rup Kuer v. State of Bihar* (1978 BBCJ (HC) 282) (supra). Within this jurisdiction, by way of analogy, the recent Full Bench in MANU/BH/0057/1985 : AIR 1985 Pat 196, (*Deo Narayan Singh v. Commr. of Bhagalpur Division*) (Paragraph 21) has again reiterated the same view.

10. There is, however, a slight discordant note within this Court which may now be authoritatively silenced. As has already been noticed, the Division Bench referring the case to the Full Bench in the case of *Dorik Mahto v. State of Bihar*, (MANU/BH/0038/1980 : AIR 1980 Pat 163) (supra) had doubted the case of *Ram Rup Kuer v. State of Bihar* (supra) on the ground that the provisions of the Limitation Act do not apply ; in such cases. Observations to the same tenor have been made by the Division Bench in 1980 BBCJ 216, (*Md. Yunus v. State of Bihar*). Therein, both the learned Judges whilst distinctly distinguishing the case of *Ram Rup Kuer v. State of Bihar* (supra), nevertheless proceeded to hold that the provisions of the Limitation Act do not apply at all so far as Section 12 of the Money Lenders Act is concerned primarily on the ground that the later section opens with non obstante clause. In the result, it was held that a mortgage executed in the year 1926 continued to subsist and would be deemed to have been redeemed in the year 1933 and consequently the application under Section 12 of the Act was held maintainable. With the greatest respect, if the observations in the said judgment are projected as a warrant for the proposition that Section 12 can continue to apply even where the mortgage does not subsist, then they are not sound law and are hereby overruled.

11. In this context, there appears to be some misapprehension whether Section 12 would apply prospectively or retrospectively. In view of the clear language of Section 12, there can be no manner of doubt that the same is applicable both with regard to mortgages executed before or after its date of enforcement. It affects all mortgages subsisting on the said date. Obviously, in view of the long period of limitation provided for the redemption of mortgages, this section would apply to usufructuary mortgages executed even thirty years before the Act came into force. However, this retrospectivity cannot be read as an absolute one irrespective of the Limitation Act. If the mortgage has been extinguished altogether by die passage of time and no rights of redemption subsist then, the same cannot be revived or as was colorfully observed by their Lordships the section cannot revive a dead horse.

12. Somewhat ingenious submission was also made that if Section 12 will apply only to subsisting mortgage then the result will be that there will be no mortgage subsisting after seven years of its execution and, therefore, no application for redemption of a mortgage could be filed. This contention has only to be noticed and

rejected. When it is said that Section 12 will apply to a subsisting mortgage, it is obvious that the same would be so dehors the provisions of Section 12. If the equity of redemption has not become barred by limitation, the mortgage would be a subsisting one and within the ambit of Section 12. Therefore, this must be so under the law other than the provisions of Section 12 of the Act. It seems unwarranted to read the provisions to mean that by virtue of Section 12 the mortgage shall be deemed to be redeemed after seven years from the date of its execution and, therefore, it will not be subsisting any longer and Section 12 would not be attracted. This somewhat illogical stand must, therefore, be rejected.

13. Learned counsel for the parties assailed the ratio in *Ram Rup Kuer v. State of Bihar* (1978 BBCJ282) (supra). He was compelled to go to the logical extreme that the provisions of the Limitation Act cannot apply and consequently Section 12 of the Act would still be attracted to a mortgage whether executed a century or even more earlier. Such stand would not only affect the mortgagor and mortgagee inter se but innumerable transactions of bona fide purchasers, etc., coming during the said period. It seems inconceivable that the legislature could have intended that vested rights of a century or more would still be upset and divested by the provisions of Section 12 and long after the mortgagee has ceased to subsist. No such illogical purpose can easily be attributed to the authors of the said section. One must, therefore, shun the falsehood of the extreme proposition advanced that irrespective of passage of hoary time Section 12 will still revive a long extinguished mortgage and then statutorily redeem it in favour of the mortgagor.

14. To finally conclude, the answer to the question posed at the outset is rendered in the affirmative. It is held that a mortgage must be a subsisting one on the date of the enforcement of the Bihar Money Lenders* Act, 1974 in order to come within the ambit of statutory redemption under Section 12 thereof. The reasonings and the ratio in *Ram Rup Kuer v. State of Bihar* (supra) is hereby affirmed.

15. The significant common question in these cases having been answered in the terms indicated above, the respective cases will now go back to the appropriate Benches for decision on merits.

L.M. Sharma, J.

16. I agree.

S. Ali Ahmad, J.

17. I agree.

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