

**HIGH COURT OF GUJARAT**

**HEIRS OF CHAUDHARI VALJIBHAI BHAGWANBHAI AND ORS**

*Versus*

**HEIRS OF CHAUDHARI PRABHUBHAI GALBABHAI AND ORS**

**Date of Decision:** 22 February 2013

**Citation:** 2013 LawSuit(Guj) 226

**Hon'ble Judges:** [C L Soni](#)

**Eq. Citations:** **2013 2 GLR 1307**

**Case Type:** Second Appeal

**Case No:** 90 of 1991

**Subject:** Civil, Limitation, Property

**Editor's Note:**

**Bombay Agricultural Debtors Relief Act, 1947 - Secs 8, 24, 51A - Right of Debtor - Mortgager not extinguished of debtor has not paid the money agreed to be paid in settlement before Authority under the Act - Decree of redemption upheld**

**Limitation Act, 1963 - Sec 30 - Proviso - Suit for redemption filed after new Act of 1963 came into force - Considering Sec 30 - Proviso, suit is not time barred - Appeal dismissed**

**Acts Referred:**

[Code Of Civil Procedure, 1908 Sec 100](#)

[Transfer Of Property Act, 1882 Sec 60](#)

[Limitation Act, 1963 Sec 30](#)

[Bombay Agricultural Debtors Relief Act, 1947 Sec 32, Sec 31\(a\), Sec 8, Sec 24](#)

**Final Decision:** Appeal dismissed

**Advocates:** [M C Barot](#), [R C Jani](#)

**[Cases Referred in \(+\): 1](#)**

**C. L. Soni, J.**

**[1]** This appeal is by the original defendants against whom the respondent- original plaintiffs filed Regular Civil Suit No.154 of 1982 for redemption of the mortgage.

**[2]** Case of the plaintiffs is that the plaintiffs are owners of the land bearing Survey No.962 situated in village Mandosan, Taluka Visnagar. The said property was mortgaged with deceased Chaudhary Veljibhai for Rs.500/- on 31.1.1944 and thereafter, by taking further amount on 3.6.1949, a registered deed of mortgage was executed by the plaintiffs for the suit property for an amount of Rs.3,000/-. It is further case of the plaintiffs that said mortgage was for a period of five years and the plaintiffs were entitled to get property released from mortgage.

**[3]** Suit of the plaintiffs was resisted by the defendants taking various defences. It was stated that there was no relationship of mortgagor and mortgagee between the parties and the suit property was never belonging to the plaintiffs. The suit property was of the ownership of Veljibhai Bhagwanbhai. The possession of the same remained with him and other defendants are wrongly joined in the suit. It is further stated that on 1.8.1949, Debt Relief Law came into force, under which the parties had agreed before the Court by presenting consent application on 3.1.1952 that the plaintiffs would pay Rs.3,000/- with interest at the rate of 3% to deceased Veljibhai Bhagwanbhai for getting the suit property released and till such amount was paid, the property was to remain under charge. It is further stated by defendants that plaintiffs did not pay the said amount till 27.4.1954 and therefore, the suit of the plaintiffs was not maintainable. It is further case of the defendants that the plaintiffs after having accepted Rs.34,000/- executed sale deed on unregistered stamp paper and from 1976, the defendants have become owners of the property and therefore also, the suit is not maintainable.

**[4]** Learned Trial Judge on appreciation of the evidence came to the conclusion that though the plaintiffs had proved that the suit property was mortgaged by registered deed for 5 years, but the plaintiffs have failed to prove that after 23.11.1954 and thereafter also, after 12.1.1976, such mortgage continued. Trial Court further came to the conclusion that after 1954, defendants have become owners of the property as per the award passed by the Debt Relief Court. Trial Court further came to the conclusion that by virtue of the award passed on 3.1.1952 by the Court under the Bombay Agricultural Debtors Relief Act, 1947 (for short, BADR Act ), all past transactions came to an end and therefore, the plaintiffs were not entitled to redemption of the mortgaged property. Trial Court thus dismissed the suit of the plaintiffs by judgment and decree dated 29.4.1988.

**[5]** Plaintiffs, therefore, preferred Regular Civil Appeal No.64 of 1988. Learned Appellate Judge recorded finding that the suit property was mortgaged by registered

deed for Rs.3,000/- on 3.6.1949 and the plaintiffs were entitled to redemption of the mortgage within the time available to the plaintiffs. Appellate Court came to the conclusion that suit of the plaintiffs was within 30 years from the date of accrual of the cause of action for redemption of the mortgage. Learned Appellate Judge also considered the question as to whether by virtue of the award passed under BADR Act, right of the plaintiffs to redeem the mortgaged property got extinguished or not. Learned Appellate Judge came to the conclusion that right of redemption could be extinguished only as provided under Section 60 of the Transfer of Property Act and the award under BADR Act by the Court would not extinguish the right of the plaintiff for redemption of the mortgaged property. Learned Appellate Judge thus held that irrespective of the award passed under BADR Act, whereby the charge was created on the suit property till payment of Rs.3,000/- by the plaintiffs, right of the plaintiffs for redemption of the suit property subsisted and since the plaintiffs have filed suit for redemption of the mortgaged property within the time limit, the plaintiffs were entitled to relief of redemption in the suit and learned Trial Judge committed material error in holding that right of the plaintiffs to redemption of the mortgaged property was extinguished on account of the award passed under BADR Act.

5.1. On the plea of the defendants that the plaintiffs had sold the suit property for Rs.34,000/- in the year 1971, learned Appellate Judge came to the conclusion that there was no valid sale deed executed by the plaintiffs in favour of the defendants for sale of the property and it was not believable that the alleged unregistered sale deed was executed by deceased Prabhubhai Galbabhai, whose heirs filed the present suit. On above said findings and conclusion reached by the Appellate Court, Appellate Court allowed the appeal and dismissed the cross objection of the defendants and decreed the suit of the plaintiffs for redemption of the mortgaged property. The plaintiffs were directed to deposit mortgaged money of Rs.3,000/- within 15 days before the Trial Court and the defendants were directed to produce original mortgage deed in the Court and further directed to redeem the property and to handover the peaceful possession of the suit land to the plaintiffs. Hence, this appeal.

**[6]** This appeal was admitted on following substantial questions of law:-

(1) Whether the lower appellate Court did not commit the error of law in holding that the suit was not barred by limitation ?

2. Whether the lower appellate court did not commit an error of law in holding that the right to redeem was not extinguished by the act of the parties or by the decree of the Court particularly when the agreement creating charge on the property was

on record and the award passed by the Court under the B.A.D.R. Act was also on record ?

3. Whether the lower appellate Court did not commit an error of law in holding that the suit was maintainable ?

4. Whether in view of Section 31-A (it should be 51-A) of the B.A.D.R. Act, the present suit is maintainable ?

**[7]** I have heard learned advocates for the parties.

**[8]** Learned advocate Mr. Barot appearing for the appellants submitted that after the registered mortgage in the year 1949, till the award was made under BADR Act, in the year 1952, the plaintiffs did not redeem the suit property as per the terms of the mortgage deed and therefore, on passing of the award by the Court under the said Act, right of the plaintiffs to get the suit property redeemed from the mortgage was extinguished. Mr. Barot submitted that the Court under the said Act passed award on consent application, as per which, the plaintiffs bound themselves to pay Rs.3,000/- with interest by 27.4.1952. Till which date, the charge was to remain on the property and thereafter, the plaintiffs lost right to get back the property. Mr. Barot submitted that because of the intervention of the award under BADR Act, on plaintiffs agreed to abide by such award, right of the plaintiffs to redeem the property did not survive and therefore, suit of the plaintiff for redemption of the property was not maintainable.

8.1. Learned advocate Mr. Barot further submitted that suit of the plaintiffs for redemption of the property was otherwise also time barred. He submitted that registered mortgage was dated 3.6.1949 and the suit was filed after a period of 30 years, which was the period of limitation available to the plaintiffs. He submitted that the Appellate Court has seriously erred in holding that limitation for filing suit for redemption of the mortgaged property was from 3.6.1954 and therefore, suit was within time limit. Mr. Barot submitted that limitation had already started reckoning from the date of execution of the mortgage deed and therefore, suit was not within time limit. He thus submitted that Trial Court has rightly dismissed the suit.

8.2. Learned advocate Mr. Barot also submitted that the plaintiffs had otherwise also lost their ownership right after having accepted Rs.34,000/- and after having executed the sale document in favour of the defendants. He submitted that even if after the award passed under BADR Act, right of the plaintiffs for redemption of the mortgaged property could be said to have survived then also, the plaintiffs having lost title to the suit property, were not entitled to file suit for redemption of the suit

property. He thus urged to allow this appeal on the substantial questions of law formulated in the appeal.

**[9]** As against the above arguments, learned advocate Mr. Jani appearing for the respondents-original plaintiffs submitted that Trial Court seriously erred in holding that right of the plaintiffs for redemption of the suit property was extinguished on account of award passed under BADR Act. Mr. Jani submitted that BADR Act was only for the purpose of giving relief from debt to the farmers and therefore, even if the plaintiffs had agreed to pay amount of Rs.3,000/- with interest at the rate of 3% and even if the plaintiffs could not pay such amount within the time provided in the consent application between the parties before the Court under BADR Act, the same would not extinguish the right the plaintiffs to get redemption of the suit property from the mortgage. Mr. Jani submitted that learned Appellate Judge has rightly held that right of redemption of the plaintiffs could not be lost or extinguished by intervention of the consent application and the award passed thereon by the Court under the BADR Act. Mr. Jani submitted that learned Appellate Judge has also rightly held that suit of the plaintiffs was within time limit. He submitted that the plaintiffs were entitled to file suit within 30 years after expiry of five years from the date of mortgage. He submitted that the plaintiffs having filed suit within the same time, suit of the plaintiffs was rightly held within time limit by the Appellate Court. Mr. Jani then submitted that the defendants have failed to prove that they have become owners of the suit property by virtue of the sale deed alleged to have been executed by the plaintiffs. Mr. Jani submitted that Appellate Court has recorded finding of fact that there was neither sale deed executed by the plaintiffs in respect of the suit property nor even any registered sale document was proved by the defendants. He thus submitted that Appellate Court having recorded finding of fact, right of redemption subsisted for the plaintiffs and the defendants having not proved title to the suit property and suit of the plaintiffs having found to be within limitation for redemption of the suit property, this Court while exercising powers under Section 100 of the Code of Civil Procedure may not interfere with the judgment and decree passed by the Courts below. He thus urged to dismiss the appeal.

**[10]** Having heard learned advocates for the parties and having perused the judgment and decree passed by the Courts below with record and proceedings, it appears that suit property was mortgaged by registered deed for Rs.3,000/- on 3.6.1949 with the defendants. The said mortgage deed is found at Exh.66. As found from the said mortgage deed, suit property was to be released from mortgage after expiry of five years on payment of mortgage money.

**[11]** It appears from the record that the parties went before the Court under BADR Act and filed consent application Exh.64, wherein the plaintiffs agreed to pay Rs.3,000/- with interest at the rate of 3% on or before 27.4.1952. What is found below the said

application is that the Court passed order recording that filing of consent application was in the interest and for the benefit of the plaintiffs. The said application was ordered to be filed and disposed of. There was no award passed by the Court giving any kind of direction to the parties. Thus, the plaintiffs bound themselves to pay Rs.3,000/- with 3% interest to the defendants by the above said date and to get the property released and also bound themselves that till the said date, there shall be charge on the suit property in favour of the defendants. There was nothing in the consent application nor in the order passed by the Court, which goes to suggest that there was any agreement between the parties that on non-payment of the said amount with interest before the stipulated date, right of the plaintiffs to redeem the suit property from mortgage would be extinguished. It appears that just to get relief under the said Act, the plaintiffs agreed in the consent application before the Court that Rs.3,000/- would be paid with interest at the rate of 3% by the aforesaid date and till then, the charge in favour of the defendants was to remain on the suit property. However, simply because the plaintiffs agreed that charge shall remain on the suit property, their right of redemption of mortgaged property would not be lost. Non payment of the agreed amount as per the consent application before the Court, would at the best, dis-entitle the plaintiffs from any relief in respect of the debt under the said Act but that would never take away right of the plaintiffs from getting his property redeemed from the mortgage, especially when there was no award taking away such right of the plaintiffs.

11.1. Section 8 of the BADR Act provides for making of application to the Court for recording settlement between debtor and creditor in respect of any debt due by debtor to the creditor and on such application, if Court is satisfied that settlement arrived at is bonafide and voluntary and is not made with intent to defeat or delay any of the creditors of debtor and is in the interest of the debtor records such settlement and certifies the same. Every such settlement so recorded and certified shall be binding upon the parties thereto and shall not save as otherwise provided be reopened. In fact, the main object and purpose of the said Act is to relieve an agriculture debtor of his debt and for adjustment of debt.

**[12]** At this stage, reference to Section 24 of the BADR Act is also required to be made, which would in fact further go to show that the relief to debtor was to be extended to such an extent that even if any debtor had transferred the property for adjusting debt and same is brought to the notice of the Court during hearing of the application under Section 4, Court shall declare the transfer to be a mortgage, if the Court is satisfied that the circumstances connected with that transfer showed that it was in the nature of mortgage. Therefore, from the conjoint reading of Sections 8 and 24 of the BADR Act, it appears that the Act was a beneficial legislation for the purpose

of giving relief to the agriculture debtor and by such beneficial legislation, right of the debtor to redeem the property from mortgage, whereon charge is created under the BADR Act, was not intended to be taken away and in fact, there is no provision in the Act, which takes away such right of the debtor.

**[13]** Section 32 of the BADR Act provides for making of award under BADR Act after determining the amount of debt scaled down as provided in Section 38. Section 32 reads as under:-

### 32. Award.

(1) After determining the amount of debts scaled down in the manner provided in Section 38 the Court shall, save as otherwise provided in section 33, make an award.

(2) The award shall be in the prescribed form and shall be drawn up subject to the following provisions-

(i) the amount of the secured debts scaled down shall be charged on the properties on which they may have been secured;

(ii) subject to clause (i) the amount of unsecured debts shall be charged on all the properties of the debtor [unless all the creditors declare in writing that the unsecured debts due may not be charged on any of the properties of the debtors];

(iii) in fixing the priority in which debts shall be paid the following order shall be followed:-

(a) debts due to Government which are charged on the immovable property belonging to the debtor or which are recoverable as the current year s land revenue.

(b) debts due to local authorities, which are charged on the immovable property belonging to the debtor or which are recoverable as the current year s dues.

(c) loans given by resource societies or by persons authorized to advance loans under section 78 of the repealed Act or section 54 of this Act for the financing of crops under the repealed Act or for seasonable finance under this Act after the 30th January 1940 and other loans given for financing crops after the 1st January 1939 and before the 30th January 1940.

(d) secured debts in order of priority.

(e) debts due to Government, local authorities and other bodies including co-operative societies and recoverable as arrears of land revenue.

(f) other debts due to co-operative societies,

[(ff) debts due to merged State banks.]

(g) unsecured debts:

Provided that in the case of unsecured debts they shall be paid pro rata;

iv. the total annual installments shall not exceed twelve:

Provided that in fixing the amount of installments in which the debts shall be paid the Court shall ascertain the net annual income of the debtor and the annual installments payable by the debtor shall not exceed his net annual income.

Nowhere from Section 32, the Court passing the award gets any jurisdiction to take away the right of the debtor to redeem the mortgaged property. In fact, award to be passed under Section 32 is for giving relief to the debtor and while giving such relief, Court has also power to get property released in favour of the debtor. Therefore, neither award under Section 32 nor order under Section 8 of the Act could take away the right of the debtor to redeem the mortgaged property.

**[14]** The right of redemption would stand extinguished as provided under Section 60 of the Transfer of Property Act. The Hon ble Supreme Court in the case of [Narandas Karsondas Vs. S.A. Kamtam and Another](#), 1977 3 SCC 247 has held that right of mortgagor for redemption of property could be extinguished only by registered deed or by order of the Court. In the present case, neither there is a registered document nor there is an order of the competent civil court for extinguishment of right of property of the plaintiffs. Therefore, right of the plaintiffs subsisted irrespective of the order passed by the Court under BADR Act.

**[15]** As regards question as to whether suit of the plaintiffs was barred by limitation or not, it is required to be noted that Appellate Court has recorded finding that the plaintiffs could have released their property from mortgage after a period of five years and limitation of 30 years for filing suit for redemption of mortgaged property would be reckoned on expiry of such five years. Undisputably, the suit property was mortgaged on 3.6.1949. Period of five years from the said date would expire on 2.6.1954 and considering 30 years from the said period, plaintiffs were entitled to file suit before 1984, whereas the plaintiffs filed suit in the year 1982. Even otherwise, by virtue of proviso to Section 30 of the Limitation Act of 1963, suit of the plaintiffs is within the time limit. Clause (a) of Section 30 provides that any suit for which the period of

limitation is shorter 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. In the present case, cause for the plaintiffs to file suit had arisen before coming into force of the Limitation Act of 1963 and the suit is filed after the new Act coming into force. Under the old Act, period for filing the suit would have continued till 2009. Thus, period of 7 years as per the new Act would expire earlier than the period prescribed for the suit of the plaintiffs under the old Act. However, as per proviso, if period of seven years plus whatever period under the old Act has expired before coming into force of the new Limitation Act put together is still shorter than the period of limitation prescribed for the suit under the new Act, entire period of limitation under the new Act is available for filing of the suit. In the present case, period of seven years plus period of limitation expired under the old Act before coming into force of the new Act put together would be shorter than the period of 30 years provided under the new Act for filing suit for redemption. In view of this, the suit could be filed within the period of 30 years from coming into force of the new Act. Therefore also, suit of the plaintiffs could be said to be within the time limit. In view of the above, learned Appellate Judge has not committed any error in holding that the suit filed by the plaintiffs for redemption of mortgage was within time limit.

**[16]** As regards the maintainability of suit is concerned, the suit is not filed in connection with any matter under BADR Act. As discussed above, right of the plaintiffs for redemption subsists and survives on the date of filing the suit irrespective of any order under the Act. Therefore, suit of the plaintiffs is maintainable and not barred under Section 51-A of the BADR Act.

**[17]** Contention of learned advocate Shri Barot that the defendants have purchased the suit property by sale deed cannot be accepted as Appellate Court has recorded finding of fact that the sale deed was not executed by deceased Prabhudas Galbabhai and such sale deed was not registered. Such finding of fact cannot be interfered with while exercising prayers under Section 100 of the Code of Civil Procedure.

**[18]** For reasons stated above, the appeal is required to be dismissed. Hence, the same is dismissed. The judgment and decree passed by first Appellate Court is confirmed.

**[19]** Record and proceedings to be sent back forthwith.