

M/s. Sachalmal Parasram

Vs

Smt. Ratnabai and Others

Civil Appeal No. 1414 of 1969

(CJI S. M. Sikri, A. N. Ray, M. H. Beg JJ)

13.01.1972

JUDGMENT

SIKRI, C.J. -

1. This appeal by special leave is directed against the judgment of the High Court of Madhya Pradesh dismissing the appeal filed by the appellant before us. The relevant facts for the determination of the points raised before us are as follows.

2. Respondent Nos. 1, 2 and 3, who were the owners of the premises in dispute, mortgaged the premises in favour of Respondent No. 4, with possession, vide two mortgage deeds, dated December 5, 1947 and October 26, 1948, for the amounts of Rs. 12,000/- and Rs. 4,000/- respectively. The date of payment was October 8, 1952, but by a subsequent agreement, dated November 18, 1952, this was extended. The agreement further provided as follows :

"The portion of the house in your side shall remain with you at a rental of Rs. 50/- per month. It was with you previously at Rs. 43/- per month. We shall not be responsible for any decrease or increase in the rental thereof. You shall have the right to let out the half portion of the shop on your side to any person at full rent....."

3. On May 1, 1958, respondent No. 4, the mortgagee in possession, filed a suit for foreclosure. During the pendency of this suit he let out the premises to the appellant at Rs. 55/- per month. It was provided in the rent agreement between the mortgagee and the appellant that "in case the owner of the house gets the house released from mortgage under us, then I shall get the house vacated for you and hand it over to you." On September 28, 1960, a compromise decree for redemption was passed. The mortgagors, in execution of the said compromise decree, sought to take possession of the premises in dispute, which had been rented to the appellant. The appellant's objections under Order 21, Rule 97, C.P.C., were ultimately disallowed by the High Court, in revision, on April 18, 1964. The appellant then filed the present suit, under Order 21, Rule 103, C.P.C. for a declaration that "the plaintiff (appellant) being the tenant of Defendants Nos. 1, 2 and 3 (respondents) cannot be evicted unless eviction proceedings are taken against him under M.P. Premises Control Act." In the alternative, the appellant prayed for a declaration that "if the plaintiff is considered to be the tenant of defendant No. 4 even after the redemption decree the plaintiff cannot be evicted." He also prayed for a consequential permanent injunction. The Trial Court dismissed the suit. An appeal before the Additional District Judge also failed. As already mentioned, the second appeal before the High Court also failed.

4. The learned counsel for the appellant submitted that respondent No. 4, being the mortgagee in

possession, had the right to let the premises in dispute both under Section 76 of the Transfer of Property Act, and under the agreement, dated November 18, 1952. According to him, this act was an act of prudent management and was binding on the Respondents Nos. 1, 2 and 3. He further contended that he was protected by the provisions of the Madhya Pradesh Accommodation Control Act, 1961, and could not be evicted except in accordance with the provisions of that Act.

5. The points raised by Mr. Naunit Lal are concluded by the decision of this Court in All India Film Corporation Ltd. v. Sri Raja Gyannath, ([1969] 3 SCC 79, 82) which decision was unfortunately not brought to our notice during the course of the hearing. In this case, the facts were similar. A mortgagee in possession had let out the premises, which was a cinema house, and the lessee had further sublet the same, to sub-lessees. On redemption the purchaser of the interest of the mortgagor filed a suit for possession of the property from the head lessee and the sub-lessees. The sub-lessees claimed the benefit of East Punjab Urban Rent Restriction Act, 1949 (3 of 1949). In the High Court three points were raised. One of the points urged was whether the defendants were protected by the East Punjab Urban Rent Restriction Act. This Court first considered the question : Did the tenancy created by the mortgagee in possession survive the termination of the mortgagee interest so as to be binding on the purchaser ? This Court concluded :

"The relationship of lessor and lessee cannot subsist beyond the mortgagee's interest unless the relationships agreed to by the mortgagor or a fresh relationship is recreated. This the mortgagor or the person succeeding to the mortgagor's interest may elect to do. But if he does not, the lessee cannot claim any rights beyond the term of his original lessor's interest. These propositions are well-understood and find support in two rulings of this Court in Mahabir Gope and Others v. Harbans Narain Singh ([1952 SCR 775 : AIR 1952 SC 205 : 1952 SCJ 292) and Asaram and Others v. Mst. Ram Kali. ([1958 SCR 985 : AIR 1958 SC 183 : 1958 SCJ 575)."

6. Referring to Section 76(a) of the Transfer of Property Act, this Court observed :

"From this (provision) it is inferred that acts done bona fide and prudently in the ordinary course of management, may bind even after the termination of the title of the mortgagee in possession. This principle applies ordinarily to the management of agricultural lands and has seldom been extended to urban property so as to tie it up in the hands of lessees or to confer on them rights under special statutes....."

7. On the facts of the case this Court held :

"The case is thus not covered by the exception because we cannot hold that such a long lease on such a small rent was an act of prudence, whether it was a bona fide act or not, and whether the exception can apply to urban property."

8. In the present appeal there is a finding of the District Judge that the lease was not an act of prudent management. Further, the rent deed itself stipulated that the lessee would vacate the house and hand over the same to Respondent No. 4 in case the owner of the house got the house released from mortgage.

9. This Court then examined the question whether the tenants could take advantage of the provisions of the East Punjab Urban Rent Restriction Act, 1949. The Court answered the question in the following words :

"The respondents attempted to argue that the Rent Restriction Act defines landlord and tenant with reference to the payment of rent. A landlord means a person entitled to receive rent and a tenant means any person by whom or on whose account rent is payable. These definitions apply if the tenancy, either real or statutory, could be said to survive after the termination of the mortgage..... the termination of the mortgagee interest terminated the relationship of landlord and tenant and it could not, in the circumstances, be said to run with the land. There being no landlord and no tenant, the provisions of the Rent Restriction Act could not apply any further."

10. The definitions of the words "tenant" and "landlord" in the Madhya Pradesh Accommodation Control Act are similar. We may mention that the same view was taken by the Bombay High Court in *Kamalakar & Co. v. Gulamshafi Imambhai Mussalman*, (ILR 1963 Bom. 236 : AIR 1963 Bom 42) and *Bhanshali Khushalchand Shamji v. Shah Shamji Jivraj*. ([1957] 59 BLR 684 : AIR 1958 Bom. 53).

11. In the result, the appeal fails and is dismissed with costs.

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