

Raj Narain Pandey And Others

Vs

Sant Prasad Tewari And Others

Civil Appeal No. 1308 of 1967

(C. A. Vaidialingam, H. R. Khanna, Y. V. Chandrachud JJ)

31.10.1972

JUDGMENT

KHANNA, J. -

1. This appeal by special leave is directed against the judgment of Allahabad High Court whereby that court reversed the decisions of the trial court and the first appellate court and awarded a decree for possession of the land in dispute in favour of the plaintiff-respondents against the defendant-appellants. The appellants were further held to be entitled to withdraw the mortgage amount which had been deposited by the respondents.

2. On January 16, 1923, Ganga Prasad Rai, father of Lachhman Singh plaintiff-respondent No. 7, executed a mortgage deed in respect of land in dispute for Rs. 600 in favour of Ram Cheej Pandey, and put him possession thereof as a mortgagee. Ram Cheej Pandey, who was impleaded as defendant No. 1 in the suit, is now dead and the appellants, who too were impleaded as defendants, are his legal representatives. Ganga Prasad Rai at the time of the mortgage was the occupancy tenant of the land in dispute. On January 6, 1955, plaintiff-respondents No. 1 to 6 along with Lachhman Singh plaintiff No. 7 filed the present suit for possession of the land in dispute against Ram Cheej Pandey and others on the allegation that Lachhman Singh had transferred all his rights in the land with the consent and permission of the Zamindar (the landlord) in favour of plaintiffs 1 to 6. It was stated that, as a result of the said transfer, plaintiffs 1 to 6 had become the occupancy tenants of the land in dispute. The plaintiffs 1 to 6 also claimed to have acquired Bhumidhari rights of the land by depositing ten times the amount of the land revenue. According to the plaintiffs, they had a right to redeem the land from the mortgagee, but as the mortgagee was not prepared to give back the land on receipt of the mortgage money, the plaintiffs were depositing the amount in court. It was also added that plaintiff No. 7 had been joined as a co-plaintiff with plaintiffs 1 to 6 to avoid any dispute. Raj Narain Pandey, son of Ram Cheej Pandey, as well as two minor sons of Raj Narain were impleaded as defendants on the ground that the four defendants were members of the joint Hindu family and, as such, were in possession of the land in suit.

3. The suit was contested by Raj Narain Pandey. Raj Narain Pandey admitted the mortgage alleged by the plaintiffs. It was, however, averred that plaintiffs 1 to 6 had no right to redeem the land. The plaintiffs' suit was further stated to be barred by limitation as, according to the written statement, the defendants were in adverse possession of the land for more than 12 years.

4. The trial court found that the plaintiffs' suit was not barred by time. The plaintiffs were, however, held to have no right to sue. In the result the suit was dismissed. On appeal, learned Additional Civil Judge, Ballia held that plaintiffs 1 to 6 were not the successors of plaintiff No. 7. It was further

observed that the defendants, after the mortgage, had become trespassers in the land and the suit against them was barred by time. When the matter was taken up in second appeal before the High Court, the learned Judge held that in 1946 plaintiffs 1 to 6 had acquired, as a result of agreement with the Zamindar, the same rights which had vested in plaintiff No. 7 before he surrendered those rights. The learned Judge further referred to two Full Bench decisions of Allahabad High Court, namely, Chassu and Another v. Babu Ram and Another (AIR 1944 All 25 : 1944 ALJ 1 : 1944 All 166.), and Mahabal Sing and Another v. Ram Raj and Others (AIR 1950 All 604 : 1950 ALJ 713.), and in the light of those decisions, held that mortgagee of an occupancy holding by remaining in possession for over 12 years did not extinguish the right of the mortgagor to redeem him and by such possession the mortgagee only prescribed for mortgagee rights. It was further held that the plaintiffs were entitled to redeem the mortgage and recover possession of the land and that the suit of the plaintiffs was not barred by time. In the result, the plaintiffs' appeal was accepted, the decisions of the courts below were set aside, and a decree for possession of the land in dispute was awarded in the plaintiffs' favour. The defendants were held entitled to withdraw the mortgage amount already deposited by the plaintiffs.

5. Mr. Agarwal in appeal before us has submitted on behalf of the defendant-appellants that the plaintiff-respondents 1 to 6 were not entitled to sue possession of land on payment of the mortgage money and that their suit was barred by limitation. The above submissions have been controverted by Mr. Dikshit on behalf of the plaintiff-respondents, and he has canvassed for the correctness of the view taken by the High Court.

6. Before dealing further with the matter, we may refer to some of the statutory provisions which have been referred to by Mr. Agarwal. Sub-section (1) of Section 33 of the U.P. Tenancy Act, 1939 (U.P. Act No. 17 of 1938) (hereinafter referred to as the Act of 1939) provides, inter alia, that the interest of an occupancy tenant is not transferable, otherwise than in accordance with the provisions of the Act. According to sub-section (1) of Section 44 of that Act, every transfer, other than a sub-lease, made by a tenant in contravention of the provisions of this Act, shall be void. Section 45 of the above mentioned Act deals with the extinction of tenancy, and according to clause (c) of the section, the interest of a tenant shall be extinguished subject to the provisions of Sections 83 to 88 by surrender. Surrender by a tenant is dealt with in Section 82 of the Act. It is provided in the section that a tenant not bound by lease or other agreement for a fixed term to continue to occupy the land, may at the end of any agricultural year surrender his holding, by sending a registered notice to his landholder intimating his intention to do so and by giving up possession thereof whether such holding is or is not sub-let or mortgaged. Further conditions are also prescribed in that section, but we are not concerned with them. Section 180 of the above mentioned Act provides for ejection of person occupying land without consent. According to this section, a person taking or retaining possession of a plot of land without the consent of the persons entitled to admit him to occupy such plot and other wise than in accordance with the provisions of the law for the time being in force, shall be liable to ejection under this section on the suit of the person to entitled and also to pay damages which may extend to four times the annual rental value calculated in accordance with the sanctioned rates applicable to hereditary tenants. The Fourth Schedule to the Act deals with suits triable by Revenue Courts and prescribes the period of limitation for such suits. Sub-clause (b) of Clause 2 of item No. 18 of Group B of the said Schedule prescribes a period of two years for filing the suit under Section 180 of the Act "from the 1st July following the date of the unauthorised occupation or following the date of the commencement of this Act, whichever is later".

7. Reference has also been made by Mr. Agarwal to the following passage in the judgment of the High Court :

"At the same time, it is equally clear that the rights acquired by plaintiffs Nos. 1 to 6 as a result of the contract of tenancy entered into by the Zamindar in their favour in 1946 were the same rights which vested in the 7th plaintiff before surrender and which had passed on to the Zamindar by act of surrender by 7th plaintiff. At the time of the settlement in 1946 the defendants were in possession under a void usufructuary mortgage. The surrender by the 7th plaintiff preceding the aforesaid settlement could only be a surrender of such rights as the 7th plaintiff still had at that time and, similarly, the settlement in favour of plaintiffs Nos. 1 to 6 by the Zamindar could only be settlement of those very rights. What, therefore, has to be considered is what was the nature of the rights which the 7th plaintiff Lachhman Singh retained after executing the void mortgage in 1923 and putting the first defendant in possession."

8. It is urged by Mr. Agarwal that though plaintiff No. 7 surrendered his occupancy rights in favour of the landlord, the effect of that was not only the extinction of the occupancy rights but also the extinction of the mortgage in favour of the defendant-appellants. The possession of the land in dispute by the defendant-appellants thereafter was as trespassers. A suit against them, according to Mr. Agarwal, should have been brought in the Revenue Court by the plaintiff-respondents, in whose favour fresh occupancy rights had been created by the landlord, within two years under Section 180 read with item 18 of Fourth Schedule of Act of 1939. As no suit was brought within the prescribed time against defendant-appellants and as they remained in adverse possession of the land for a period of more than 12 years, the present suit brought by the plaintiff-respondents, it is submitted, was barred by time.

9. We are unable to accede to the above contention, because we find that the matter is covered by two Full Bench decisions of the Allahabad High Court. In a five-judge decision of the Allahabad High Court in the case of Mahabal Singh and Another v. Ram Raj and Others (supra), the court referred to the decision of a three-judge bench of that court in the case of Chassu and Another v. Babu Ram and Another (supra) and found that the following five propositions had been laid down in the earlier case :

" (1) That the usufructuary mortgage of an occupancy holding by a tenant is void and not voidable.

(2) That a mortgagor after giving possession to the mortgagee cannot recover possession of the holding without paying the money which he had taken from the mortgagee.

(3) That a mortgagee of an occupancy holding by remaining in possession for over 12 years does not extinguish the rights of the mortgagor to redeem him and by such possession the mortgagee only prescribes for mortgagee rights.

(4) That it is open to the mortgagor to seek possession of the holding by tendering the consideration which he had received and he may do so by a redemption suit.

(5) The relationship which comes into existence as a result of the mortgage of an occupancy holding and its possession being transferred to the mortgagee, though not strictly speaking that of a mortgagor and a mortgagee, is analogous to that relationship, and the action which is raised by the mortgagor to recover possession of

the holding on payment of the money due to the mortgagee, though not strictly in the nature of a redemption, is analogous to a redemption suit."

10. It was also observed that to take a contrary view from the law laid down in those five propositions would have the effect of unsettling the law established for a number of years. Mr. Agarwal has not questioned the correctness of the above mentioned five propositions and, in our opinion, rightly so. In the matter of the interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not disturbed. A different view would not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling transactions which might have been entered into on the faith of those decisions. The doctrine of stare decisis can be aptly invoked in such a situation. As observed by Lord Evershed M. R. in the case of *Brownsea Haven Properties v. Poole Corpn.*, there is well-established authority for the view that a decision of long-standing on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior court not strictly bound itself by the decision.

11. In the light of the above mentioned Full Bench decisions, it cannot be disputed that the status of the defendant-appellants was analogous to that of mortgagees. It also cannot be disputed that the successor of the original mortgagor would be entitled to recover possession of the mortgaged land from the defendant-appellants on payment of the mortgage money. Mr. Agarwal, however, submits that plaintiff-respondents 1 to 6 are not the successor of Lachhman Singh plaintiff No. 7. It is urged that after the surrender of the occupancy rights by Lachhman Singh, the plaintiff-respondents cannot ask for redemption of the mortgage created by Lachhman Singh. This contention, in our opinion, is not well-founded. The copy of the compromise decree, dated January 4, 1946, February 2, 1945, has been placed on record, and it would appear therefrom that in a suit brought by the plaintiff-respondents 1 to 6 against the landlords and Lachhman Singh (who was described in that suit as Lachhman Rai), the plaintiffs 1 to 6 were accepted to be occupancy tenants of the land in dispute. The effect of that decree was that while the occupancy rights of Lachhman Singh came to an end, those of plaintiff-respondents 1 to 6 came into existence at the same time. As plaintiff-respondents 1 to 6 became the occupancy tenants of the land in dispute, they were, in our opinion, entitled to redeem the land from the mortgagees. The material on record also indicates that plaintiff-respondents 1 to 6 have been declared to be the Bhumidhars of the land in dispute. Sanad, dated October 5, 1949. As plaintiff-respondents 1 to 6 were the occupancy tenants of the land in dispute and as they were declared to be Bhumidhars, they had, in our opinion, sufficient interest in the land as clothed them with the right to redeem it from the mortgagee. Clause (a) of Section 91 of the Transfer of Property Act provides, inter alia, that any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon the property mortgaged or in or upon the right to redeem the same may institute a suit for redemption of the mortgaged property. The case of the plaintiffs, who were the occupancy tenants and Bhumidhars of the land in dispute, is clearly covered by clause (a) of Section 91 of the Transfer of Property Act. The fact that the present suit has been filed not by the occupancy tenant who mortgaged the property but by others in who the occupancy rights were subsequently vested would, in our opinion, make no difference and would be no bar to the maintainability of the suit. It is significant in this context to observe that plaintiffs 1 to 6 became the occupancy tenants of the same land of which Lachhman Singh's father was the occupancy tenant at the time of the mortgage.

12. It was also been argued by Mr. Agarwal that the suit for possession brought by the plaintiff-respondents was not maintainable in a civil court and could only be tried by a revenue court. Apart from the fact that no such plea was taken in the written statement or in the trial court or the first

appellants court, we find that the five-judge bench of the Allahabad High Court in the case of Mahabal Singh and Another (supra) has held that such a suit is maintainable in civil court. We see no cogent ground to disturb that view.

13. The appeal fails and is dismissed with costs.

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