

Narendra Bahadur Tandon

Vs

Shankar Lal (Since Deceased) By Lrs

Civil Appeal No. 575 of 1970

(N. L. Untwalia, O. Chinnappa Reddy JJ)

25.01.1980

JUDGMENT

CHINNAPPA REDDY, J. -

1. Hulas Chand and Bilas Chand, original owners of a certain plot of land in Saharanpur, granted a permanent lease of the land to Patel Mills Ltd., in May, 1930. The annual rent was Rs. 75. The lessee was empowered to use the land for any purpose whatsoever. The rights of the lessee were expressly made transferable. Though the lease was permanent, there was a condition that the lessor could forfeit the lease if the lessee failed to pay rent for three consecutive years. On November 1, 1932 Hulas Chand and Bilas Chand transferred their interest to Budh Singh and Jialal. Jugal Kishore, became entitled to the rights of Budh Singh and Jialal by purchase under sale deeds dated April 27, 1943 and May 11, 1943. But, Shankarlal and Piareylal (present plaintiffs) filed a suit for pre-emption against the vendors and Jugal Kishore and as a result of the decree passed in the suit, they became entitled to the lessor's interest in the suit plot of land on August 13, 1945.

2. Meanwhile the lessee Patel Mills Ltd., went into liquidation and Mehra was appointed voluntary liquidator of the company on May 11, 1937 by a special resolution at a meeting of the creditors of the company. Benaras Bank Ltd., was the biggest creditor of the company. So the liquidator negotiated the sale of all the assets of the company to the Benaras Bank Ltd., for a sum of Rs. 70,000 and on February 23, 1939 executed an agreement of sale after receiving the consideration. The leasehold interest in the suit plot was also included as one of the assets in the agreement of sale. At a meeting held on May 4, 1939 the creditors accepted the final report of the voluntary liquidator. The report was sent to the Registrar of Joint Stock Companies, and registered on September 9, 1939. The company thus stood dissolved with effect from December 9, 1939. Subsequently on March 1, 1940 the Benaras Bank Ltd. itself went into liquidation. The official liquidator of the Benaras Bank Ltd. found that there was no duly executed deed of transfer executed by the voluntary liquidator of the company in favour of the Benaras Bank Ltd. in respect of the leasehold interest in the suit plot of land. At the instance of the official liquidator of the bank, Shri Mehra the erstwhile voluntary liquidator of the company executed a deed of sale on January 28, 1941 and had it duly registered. On March 9, 1943 the official liquidator transferred the leasehold interest in the suit plot of land to the defendant-appellant.

3. We have mentioned that Patel Mills Ltd., stood dissolved with effect from December 9, 1939. Budh Singh and Jialal had earlier, i.e. on April 12, 1939, accepted rent from the voluntary liquidator of the company. After the dissolution of the company and the transfer of the leasehold interest by the voluntary liquidator to the Benaras Bank Ltd., Budh Singh and Jialal sent a notice dated January 11, 1941 to the liquidator of the Benaras Bank Ltd. through their lawyer demanding payment of

arrears of rent for four years and asserting that the lease was forfeited consequent on the lessee's failure to pay rent for a continuous period of three years. The liquidator denied the claim of right of the lessor to forfeit the lease but admitted the claim for rent. Rent was accordingly paid and was accepted by Budh Singh and Jialal. Later, on March 21, 1946, Jugal Kishore who had purchased the rights of Budh Singh and Jialal also accepted rent from the official liquidator of the Benaras Bank Ltd.

4. Shankarlal and Piareylal who became entitled to the lessor's interest in the suit plot of land as a result of the decree for pre-emption which they obtained against Jugal Kishore and his vendors, filed the suit out of which the appeal arises to recover possession of the land. Their case was that the leasehold interest in the land was not validly transferred by the voluntary liquidator and, therefore, the defendant acquired no right in the land.

5. Several defences were raised. It was claimed that the voluntary liquidator had the authority in law to execute the deed of sale and formally complete a transaction which had already taken place. It was also claimed that the predecessors in the interest of the plaintiffs having accepted rent from the official liquidator of the bank, the plaintiffs were estopped from contending that the transfer in favour of the bank was not valid. Section 53-A, Transfer of Property Act was also invoked as a defence to the action of the plaintiffs. It was lastly pleaded that the plaintiffs had no right to sue for possession as the leasehold interest in the land had escheated to the government on the dissolution of the company. The suit was dismissed by the trial Court. The judgment and decree of the trial Court were affirmed by the first appellate Court and a learned single Judge of the High Court in second appeal. The learned single Judge found in favour of the defendant on the question of estopped, escheat and authority of the voluntary liquidator to execute the sale deed but found against the defendant on the applicability of Section 53-A of the Transfer of Property Act. On appeal by the plaintiffs under Clause 10 of the letters patent a Division Bench of the High Court reversed the judgment and decree of the subordinate courts and decreed the suit. The Division Bench held that the voluntary liquidator had no authority to execute the deed of sale after the dissolution of the company and that there was neither estoppel nor escheat. The Division Bench also held that Section 53-A of the Transfer of Property Act did not protect the defendant. The defendant has preferred this appeal after obtaining a certificate from the High Court under Article 133(1)(b) of the Constitution.

6. The submission of Shri Javali learned counsel for the appellant on the question of the applicability of section 53-A of the Transfer of Property Act and the authority of the voluntary liquidator after the dissolution of the company to execute the deed of sale may be easily disposed of. We do not think that Section 53-A of the Transfer of Property Act is attracted to the facts of the present case. The right under Section 53-A is available against the transferer effecting the incomplete transfer and any person claiming under him. It is difficult to understand how the successor-in-interest of a lessor can ever be said to be a person claiming under a lessee making an incomplete transfer of the leasehold interest. Nor do we find force in the submission of the learned counsel that the voluntary liquidator had legal authority, after dissolution of the company to execute the deed of sale so as to formally complete the transaction which had already been entered into. Reliance was placed by the learned counsel for the appellant on the decision of Farwell, J., in *Pulsford v. Devenish* ((1903) 2 Ch D 625 : 52 WR 73 : 19 TLR 688). In that case a liquidator was guilty of gross dereliction of duty. In the words of Farwell, J. : "A more gross dereliction of duty by a liquidator I have seldom heard of". Though in possession of sufficient assets of the liquidating company to pay all its debts in full the liquidator took no steps to ascertain the creditors of the liquidating company or to see that they were paid. Instead he sold the business and assets of the company to a purchasing company who covenanted to pay all the debts and liabilities of the

liquidating company. The purchasing company did not pay the debts. The liquidating company was dissolved. The creditors had no remedy by which they could recover their debts. A creditor of the liquidating company sued the liquidator for recovery of damages. It was held that the liquidator was guilty of negligence in the discharge of his statutory duty and was liable in damages to the unpaid creditors of the liquidating company. What was decided in the case was not that a liquidator could represent the erstwhile company after it was dissolved but that a liquidator could be sued in damages for breach of a statutory duty which he had failed to perform while functioning as liquidator. We do not think that this case is of any assistance to the appellant. We are unable to appreciate how after the company was dissolved the liquidator could still claim to represent the company and execute a registered deed of sale. Once the company was dissolved it ceased to exist and the liquidator could not represent a non-existing company. If the liquidator was to discharge any duty or perform any function on behalf of the dissolved company he should have express statutory authority. The Companies Act, 1913 contained no provision enabling the liquidator to do any act on behalf of a dissolved company. Section 209(H) of the Companies Act, 1913 enjoined the liquidator as soon as the affairs of the company were wound up to make up an account of the winding up and to call a general meeting of the company and a meeting of the creditors for the purpose of laying the accounts before the meetings. The liquidator was then required to send to the Registrar a copy of the account and to make a return to him of the holding of the meetings. The Registrar on receiving the accounts and the returns was required to register them and on the expiration of three months of registration the company was to be deemed as dissolved. The only duty cast upon the liquidator thereafter was that under Section 244(B). It was that the liquidator should on the dissolution of the company pay into the Reserve Bank of India, to the credit of the Central Government in an account called the Companies Liquidation Account any money representing unclaimed dividend or any undistributed assets in his hands on the day of dissolution. No other duty was stipulated to be performed by the liquidator under the provisions of the Companies Act, 1913, after the dissolution of the company. We are, therefore, unable to agree with the submission of the learned counsel that the liquidator had the jurisdiction to execute the deed of sale dated January 28, 1941 after the company had been dissolved.

7. The next question which we must consider is what was the effect of the dissolution of the company on the leasehold interest which the company had in the land. No term of the lease has been brought to our notice by which the lease would stand extinguished on the dissolution of the company. If the company had a subsisting interest in the lease on the date of dissolution such interest must necessarily vest in the government by escheat or as bona vacantia. In India the law is well settled that the property of an intestate dying without leaving lawful heirs and the property of a dissolved corporation passes to the government by escheat or as bona vacantia. Of course such property will be subject to trusts and charges, if any, previously effecting it, vide *M/s. Pierce Leslie & Co. Ltd. v. Violet Ouchterlony Wapshare* (AIR 1969 SC 843 : (1969) 3 SCR 203 : 39 Com Cas 808). It is also to be noticed here that Section 244(B) of the Companies Act, 1913, as well as Section 555(2) of the Companies Act, 1956 expressly enjoin a duty on the liquidator to deposit, on the dissolution of the company, into an account in the Reserve Bank of India known as the Companies Liquidation Account any money representing unpaid dividend or undistributed assets lying in his hands at the time of dissolution. The learned counsel for the appellant relied upon the decisions of the Allahabad High Court in *Tulshi Ram Sahu v. Gurdial Singh* (ILR 33 All 111 : 7 All LJ 1011 : 7 IC 231) and *Musammam Ramman Bibi v. Mathra Prasad* (75 IC 621 : AIR 1923 All 374). Both were cases of fixed-rate tenancies. As pointed out by the Full Bench in *Tulshi Ram Sahu v. Gurdial Singh* (ILR 33 All 111 : 7 All LJ 1011 : 7 IC 231), one of the incidents of a fixed-rate tenancy was that provided by Section 18 of the Agra Tenancy Act, 1901 which prescribed that a

right of occupancy would stand extinguished when a fixed-rate tenant died leaving no heir entitled under the Act to inherit the right of occupancy. It followed therefrom that the land had to revert to the landlord and could not go to the government by escheat. On the other hand in *Sonet Kooer v. Himmut Bahadoor* (ILR 1 Cal 391 : 3 IA 92 : 25 WR 239), the Privy Council held that on the failure of heirs to a tenant holding land under Mokurrari Tenure there was nothing in the nature of the tenure which prevented the Crown from taking the Mokurrari by escheat, subject to the payment of rent to the Zamindar. If the leasehold interest of the company in the land became vested in the government on the dissolution of the company it must follow that the suits at the instance of the plaintiffs was not maintainable.

8. The next question for consideration is whether the plaintiffs were estopped from denying the validity of the sale in favour of the Benaras Bank Ltd., and the character of the possession of the Benaras Bank Ltd. and its successors-in-interest. As already mentioned by us Budh Singh and Jialal sent a notice dated January 11, 1941, through their lawyers demanding of the liquidator of the Benaras Bank Ltd., payment of arrears of rent for four years and asserting that the lease was forfeited consequent on the lease's failure to pay rent for a continuous period of three years. The liquidator denied the claim of right of the lessor to forfeit the lease but admitted the claim for rent. The liquidator paid the rent and it was accepted by Budh Singh and Jialal. Later also the evidence shows that Jugal Kishore the purchaser from Budh Singh and Jialal also accepted rent from the official liquidator of the Benaras Bank Ltd. This course of conduct of Budh Singh and Jialal and their successor Jugal Kishore clearly indicates the acceptance, by them, of the position that the Benaras Bank Ltd. had succeeded to the rights of the company in the leasehold interest. Further, the official liquidator of the Benaras Bank Ltd. first tried to sell the leasehold interest by public auction. When that sale did not frustify because of the failure of the highest bidder to deposit the sale price, the leasehold interest was sold to the defendants with the sanction of the Company Judge. At no point of time did the predecessors-in-interest of the plaintiffs raise the slightest objection to the sale of the leasehold interest. It was thereafter that the defendant obtained the permission of the municipal Board, Saharanpur, and raised constructions on the land. The plaintiffs themselves admittedly reside near about the land in dispute. They did not raise any objection to the raising of the construction. The plaintiffs as well as the defendants appeared to proceed on the common understanding that the defendants had succeeded to the interest of Patel Mills Ltd., in the leasehold interest. We are, therefore, of the view that the plaintiffs were estopped from contending with that the defendant had no interest in land. The only right of the plaintiffs was to receive the rent. The result of our discussion is that the appeal is allowed and the suit is dismissed with costs throughout. It is, however, made clear that the plaintiffs have the right to receive rent from the defendants.

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