

C. V. Raghavachar

Vs

Lakshminarasamma and Others

Civil Appeals Nos. 692 of 1976 and 307 of 1977

(R. S. Pathak, A. C. Gupta JJ)

07.08.1980

JUDGMENT

GUPTA, J. –

1. In these two appeals by special leave the contest is between two purchasers in execution of two decrees on successive mortgages, each seeking to redeem the other. The prior mortgagee did not implead the puisne mortgagees in his suit. In the suit brought on the subsequent mortgages the prior mortgagee was initially impleaded but later the suit was withdrawn against him. The only question debated before us is, who has the preferential right to redeem as between the two auction purchases.

2. The facts may be briefly stated. The property in dispute is a house in Mysore City of which one Srirangachar was the original owner. On August 28, 1946 he borrowed Rs. 8000 from C. K. Ramachandra Rao executing a simple mortgage deed mortgaging the house. On two different dates in March and May in 1947 Srirangachar again borrowed Rs. 1000 and Rs. 1500 from A. N. Dattu Rao executing two simple mortgage deeds mortgaging this house. In June 1951 Srirangachar borrowed Rs. 1000 from C. S. Raghunatha Rao again executing a simple mortgage deed mortgaging the same property. These were thus four simple mortgages of which two were held by A. N. Dattu Rao. On March 29, 1952 the first mortgagee C. K. Ramachandra Rao instituted a suit against the mortgagor for recovery of the mortgage debt by sale of the house. As already stated the subsequent mortgagees were not impleaded in that suit, but there is no finding that they were left out designedly. The suit was decreed in September 1952 the house was brought to sale and the mortgagee himself purchased the property on November 29, 1955. The sale was confirmed on January 9, 1956. The second mortgagee Dattu Rao filed a suit on his mortgage bonds on December 6, 1956. Dattu Rao impleaded the mortgagor and his sons and the legal representatives of the fourth mortgagee C. S. Raghunatha Rao who had died in the meantime; though initially the first mortgagee C. K. Ramachandra Rao was joined as a party in this suit, later Dattu Rao withdrew the suit against him. Dattu Rao's suit was also decreed, but the first mortgagee had in the meantime obtained possession of the mortgaged property and leased it out to P. S. Raghavachar, a son of the mortgagor. In execution of the decree passed in Dattu Rao's suit the property was again sold and the present appellant C. V. Raghavachar bought it subject to the rights of the first mortgagee. The sale was confirmed on October 10, 1958. Appellant C. V. Raghavachar was able to take possession of the property except a portion and he claims to be in possession through tenants. The appellant acquired the rights of both the other mortgagees, Dattu Rao and Raghunatha Rao. In the meantime in January 1958, the first mortgagee C. K. Ramachandra Rao had sold the property to one Srinivasamurthy. On December 1, 1962 C. V. Raghavachar filed a suit, O.S. 889 of 1962, for redemption of the first mortgage and for possession of the part of the property which was in the occupation of the mortgagor's son as lessee of the first mortgagee C. K. Ramachandra Rao. In this suit both the

original mortgagor and Srinivasamurthy to whom the first mortgagee sold the property were impleaded as defendants. In his written statement filed in this suit Srinivasamurthy set up his right to redeem the subsequent mortgagees as transfer of the mortgagor's equity of redemption acquired by the first mortgagee. The trial Court and the lower appellate Court both held that C. V. Raghavachar was entitled to redeem the first mortgage and decree the suit. The legal

3. The legal representatives of Srinivasamurthy had also filed a suit, O.S. 563 of 1964, against the mortgagor and his son who was the lessee for possession of the property and for mesne profits. The trial Court as well as the first appellate Court dismissed this suit and the legal representatives of Srinivasamurthy came up to High Court in second appeal giving rise to R.S.A. 41 of 1971.

4. The Karnataka High Court allowed both the appeals. A preliminary decree for redemption was passed in favor of the heirs of Srinivasamurthy is R.S.A 40 of 1971. Civil Appeal 692 of 1976 arises out of R.S.A. of 1971 and C.A. 307 of 1977 out of R.S.A. 41 of 1971.

5. The High Court has held rightly that the prior mortgagee when he himself purchased the mortgaged property, became entitled as assignee of the equity of redemption to redeem the subsequent mortgages. The High Court also held that if there is a conflict between the right of the prior mortgagee as assignee of the equity of redemption to redeem the puisne mortgagee and the right of the prior mortgagee takes priority. There can be no dispute that while the puisne mortgagee had a right to redeem the prior mortgagee, the prior mortgagee after he himself auction-purchased the property had the last right of redemption as the assignee of the equity of redemption. As already stated there is no finding that the omission to implead the puisne mortgagees in the first mortgagee's suit was designed to create a right prejudicial to the puisne mortgagee's claim. The High Court noticed that the suit brought by the legal representatives of Srinivasamurthy to whom the prior mortgagor had transferred his interest was not a suit for redemption but the High Court pointed out that in the suit instituted by the present appellant (OS. 889 of 1962) the preferential right of the prior mortgagee to redeem the puisne mortgagee had been pleaded as an alternative case. The High Court thought that "it is not desirable to drive the parties to another suit and it is desirable to determine the priority as between the rights of redemption claimed by the rival purchasers". The appellant who had notice of the claim of preferential right made by the legal representatives of Srinivasamurthy in suit No. 889 of 1962 cannot make a grievance that he has been taken unawares. In our opinion, on the facts of the case the view taken by the High Court cannot be questioned as illegal or improper. After it was found that the prior mortgagee had the right to redeem the subsequent mortgagees the High Court held rightly that the transfers of the prior mortgagees' interest were entitled to possession of the property.

6. The appeals are accordingly dismissed, Civil Appeal 307 of 1977 with costs; there will be no order for costs in Civil Appeal 692 of 1976.

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