

Nand Lal and Others

Vs

Sukh Dev and Another

Civil Appeal No. 2612 of 1980

21.01.1987

ORDER

1. This is an appeal arising from the decision of the High Court of Rajasthan. The question posed before the High Court was as follows :

Whether the relationship of landlord and tenant must be treated to have come to an end when the lessees accepted new relationship and became mortgagees of the same property which they were holding as tenants ?

2. The plaintiff-respondent herein instituted a suit for redemption and for recovery of possession in the court of Munsif, Shahpura against the appellants 1 to 3. The trial court framed the necessary issues and recorded evidence of the parties. Thereafter vide its judgment dated March 26, 1976, it decreed the suit for redemption but declined the relief for possession. Feeling dissatisfied with the judgment of the trial court, insofar as it related to the refusal of the relief for possession, the plaintiff went in appeal. The learned District Judge, Bhilwara by his judgment dated April 13, 1977, accepted the appeal whereby granting the relief for possession of the shop also. Thereafter the respondents went up in appeal before the High Court. After referring to the relevant clauses of the mortgage deed and the facts of the case, the High Court came to the conclusion that the learned District Judge was right in modifying the preliminary decree for redemption passed by the trial court and also in allowing the relief for possession of the shop. The High Court has construed the terms of the mortgage deed as clearly showing that the intention of the parties was to terminate the relationship of landlord and tenant and to be governed by the real relationship of mortgagee and mortgagor. In other words, on redemption of the mortgage, according to the High Court, the tenants right to possession ceased.

3. Being aggrieved by the said decision, the appellants have come up to this Court and have obtained special leave from this Court. We have perused the terms of mortgage deed and this question, in our opinion, is clearly covered by the decision of this Court in Gambangi Appaswamy Naidu v. Behara Venkataramanayya Patro ((1984) 4 SCC 382). The facts therein were as follows : (SCC headnote).

The owner of the suit property executed two usufructuary mortgage deeds in favour of the tenant of the property. The deed inter alia stipulated that the rental of the land payable by the tenant was to be adjusted against the interest payable by the mortgagor under the deed and that when the principal and interest would be repaid such payment was to be endorsed on the deed and the deed as also the land shall be "delivered to the possession of mortgagor".

4. The mortgagor filed a suit for redemption and obtained a decree. After the death of mortgagor, legal representatives filed an application for passing a final decree of the amount due. The question

as to whether delivery of actual or physical possession of the property could be directed upon redemption was the issue before this Court. This Court held that there was no merger of the interest of mortgagee and the rights of the tenant. It was further observed by this Court that for merger it was necessary that the lesser estate and higher estate should merge in one person at one and the same time and in the same right and no interest in the property should remain outstanding.

5. The court was further of the opinion that there cannot be merger of the lease and the mortgage since neither of them is a higher or lesser estate than the other. Even if the rights of the lessee and the rights of the mortgage in respect of a property were to be united in one person the reversion in regard to the lease and the equity of redemption in regard to the mortgage would be outstanding in the owner of the property and accordingly there would not be a complete fusion of all the rights of ownership in one person.

6. The court further held that what was the intention of the parties at the time of the execution of the mortgage deed in favour of the sitting tenant has to be gathered from the terms and conditions of the mortgage transaction.

7. Here we have perused the deed and we find that there is nothing to warrant an interference of relinquishment of the rights of the tenants by obtaining this mortgage deed. In that view of the matter we are of the opinion that the High Court was not right and in view of the decision of this Court, it is necessary for us to refer to the other decisions except the decision of this Court in *Shah Mathuradas Maganlal v. Nagappa Shankarappa* ((1976) 3 SCR 789 : (1976) 3 SCC 660) where the facts were entirely different. In that view of the matter the appeal has to be allowed. The judgment of the High Court is set aside. This will not prejudice the rights of the respondents to take any proceedings under the appropriate Rent Restriction Act for eviction if that is so advised. Parties will pay and bear their own costs.

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