

Om Prakash Garg

Vs

Ganga Sahai and Others

Civil Appeal No. 4076 of 1982

(A. P. Sen, V. B. Eradi JJ)

17.02.1987

ORDER

1. After hearing learned counsel for the appellant, we are satisfied that the order passed by the High Court does not call for any interference. The appellant who claims to be a tenant of the mortgagee Narain Prasad resisted the application made by the respondent-decreeholder Ganga Sahai under Order XXI, Rule 35 of the Code of Civil Procedure, 1908 pleading inter alia that being a tenant of the mortgagee he was entitled to the protection of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. That objection of his was not sustained by the executing court and it accordingly issued a warrant of possession in favour of the decreeholder. The appellant went up in appeal against the order of the executive court. The Additional District Judge differed from the executing court and held that the appellant being a tenant inducted into possession by the mortgagee was entitled to the protection of the Act and therefore could not be evicted in execution of the final decree for redemption, and further held that the respondent was only entitled to symbolical possession. Aggrieved, the respondent preferred an appeal to the High Court. By the order under appeal, a learned Single Judge following the decision of this Court in *M/s. Sachalmal Parasram v. Mst. Ratanbai* (AIR 1972 SC 637 : (1973) 3 SCC 198) held that the lease was not an act of prudent management on the part of the mortgagor (sic mortgagee) Narain Prasad within the meaning of Section 76(a) of the Transfer of Property Act, 1882 and therefore the alleged lease could not subsist after the extinction of the mortgage by the passing of the final decree for redemption and thus the appellant could not take advantage of the Act as there was no subsisting lease in his favour. After hearing the learned counsel, we are not persuaded to take a different view than the one reached by the High Court.

2. In our opinion, the appeal must also fail for another reason. Without going into the question as to whether the appellant being the mortgagee's tenant could claim the protection of the Act despite the passing of the final decree for redemption, the appeal can be disposed of on the short ground that the alleged lease under which the appellant claims the status of a tenant was made in contravention of Section 64 of the Code of Civil Procedure, 1908 and thus voidable at the instance of the respondent. The subject matter in dispute was attached on December 21, 1962 in execution of the decree obtained by the respondent against one Shonrilal. The property was mortgaged with one Narain Prasad and was sold in execution and purchased by the respondent on September 4, 1963. The sale was confirmed in favour of the respondent-decree holder on May 24, 1965. Afterwards, the respondent brought a suit for redemption and obtained a decree on October 14, 1967. The appeal of Narain Prasad was dismissed on January 22, 1971. The appellant claims to be the mortgagee's tenant. It is alleged that the property was leased in his favour by one mortgagee Narain Prasad sometime in March/April 1965 i.e. during the subsistence of the attachment. The alleged lease was therefore affected by Section 64 of the Code of Civil Procedure. That being so, the appellant cannot

claim the status of a tenant as against the respondent.

3. Accordingly, the appeal must fail and is dismissed with costs. The appellant is given four months' time to vacate the premises on his furnishing usual undertaking in this Court within four weeks from today.

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