

Madan Lal

Vs

Badri Narain and Others

Civil Appeal No. 4257 of 1984

17.02.1987

ORDER

1. The short question involved in this appeal is whether the High Court was justified in upholding the order of the Additional District Judge No. VI, Jaipur disallowing an application filed by the appellant under Order XXXIX, Rule 1 of the Code of Civil Procedure, 1908. Disagreeing with the Additional Civil Judge, Jaipur City, the learned Additional District Judge held that the appellant who as plaintiff claims to be mortgagee's tenant had no prima facie case for the grant of temporary injunction after redemption of the mortgage and therefore cannot claim the protection of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. As there was a divergence of opinion between different Benches of the High Court, a learned Single Judge referred the question to a Full Bench. We have gone through the decision of the Full Bench and also heard learned counsel for the appellant at quite some length.

2. In our opinion, the proper course to adopt is to leave the question open to be determined in the suit. The Full Bench had held that a tenant inducted by the mortgagee with possession ceases to be a tenant on the termination of the mortgagee's interest on redemption of the mortgage and therefore was not entitled to claim the status of a tenant and thus not entitled to the protection of the Act. It has referred to several decisions including those of this Court in *Asa Ram v. Mst. Ram Kali* (1958 SCR 988 : AIR 1958 SC 183) and *M/s. Sachalmal Parasram v. Mst. Ratanbai* (AIR 1972 SC 637 : (1973) 3 SCC 198). Our attention has been drawn by learned counsel for the appellant to the stipulation contained in the mortgage deed permitting the mortgagee to let out the property. He contends that there is no such rule of general acceptance that a lease of urban property by the mortgagee within the meaning of Section 76(a) of the Transfer of Property Act, 1882 which carves out an exception to the general rule that a mortgagee in possession cannot create, in the tenant inducted by him, a right to continue in possession beyond the period of redemption. We leave the question whether the alleged lease was an act of prudent management on the part of the mortgagee in possession in terms of Section 76(a) of the Transfer of Property Act and if so, the appellant was not liable to ejection in execution of the decree for redemption, to be determined by the learned trial Judge. That is the basic question to be tried in the suit. All that we need say is that these questions have to be decided in accordance with the principles laid down by this Court. The learned trial Judge will frame the necessary issue on the question whether the alleged lease was an act of prudent management within the purview of Section 76(a) of the Transfer of Property Act, there being a stipulation in the mortgage deed permitting the mortgagee in possession to let out the property. He shall afford the parties an opportunity of adducing their evidence on the question.

3. Subject to this observation, the appeal fails and is dismissed. We vacate the stay granted earlier by this Court. No costs.

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