

Hanumant Kumar Talesara

Vs

Mohan Lal

Civil Appeal No. 2524 of 1985

(A. C. Sen, B. C. Ray JJ)

01.12.1987

JUDGMENT

A. C. RAY, J. –

1. This is an appeal by special leave against the judgment and order dated November 26, 1984 in S.B. Civil Execution Second Appeal No. 12 of 1976 whereby the appeal was allowed and respondent was granted one year time to vacate the premises.
2. The facts giving rise to this appeal are as follows : The respondent mortgaged the shop belonging to him to defendants 1 to 11 on May 9, 1950 by a registered mortgage deed. The possession of the premises was given to the mortgagees with right to collect rent from the tenant in payment of interest on the mortgage amount. The mortgagees let out the premises to the defendant petitioner during the subsistence of mortgage.
3. The respondent filed a suit for redemption of the mortgage and for vacant possession of the said shop against the mortgagees i.e. defendants 1 to 11. The appellant who was the tenant of the shop was impleaded as party defendant 12 in the suit. The suit was decreed and the mortgage was redeemed. There was an order for giving vacant possession of the shop by defendants 1 to 11 to the respondent i.e. the owner of the shop. In Execution Case No. 126 of 1975 the tenant-appellant filed an application under Section 47 read with Section 151 of the Code of Civil Procedure, 1908 stating inter alia that the decree could not be executed and possession of the shop could not be given by the mortgagees to the decree-holder respondent as the tenancy of the appellant subsisted and the same had not been terminated under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. This plea was rejected by the executing court holding inter alia that letting out of the shop to defendant 12 by the mortgagees was held to be not a bona fide act made as a person of ordinary prudence in the course of management of the property under Section 76-A of Transfer of Property Act and that the relationship of the lessor and lessee could not subsist beyond the mortgagee's interest unless a new relationship was created between the landlord and the tenant-appellant. It was also held that the termination of the mortgagee's interest put an end to the relationship of landlord and tenant and the provisions of the Rent Control Act could not apply any further. The decree was executable and the appellant had no interest and as such he could not resist the execution of the decree. The application was dismissed.
4. Against this judgment and order the appellant filed an appeal being Civil Appeal No. 13 of 1976. The said appeal was, however, allowed on a finding that the provisions of Section 13(1) of the Rajasthan Rent Control Act expressly ruled out the operation of the Transfer of Property Act and a person inducted as a tenant on the premises in a lawful manner could not be evicted except in

accordance with the provisions of the Act. The decision in *M/s. Sachalmal Parasram v. Mst. Ratnabai* (AIR 1972 SC 637 : (1973) 3 SCC 198) and *All India Film Corpn. Ltd. v. Raja Gyan Nath* ((1969) 3 SCC 79) were held to be not applicable to the instant case. The interest of the appellant as a tenant subsists even after redemption of the mortgage until it is terminated in accordance with the provisions of the aforesaid Rajasthan Premises (Control of Rent and Eviction) Act, 1950.

5. The respondent preferred a Second Appeal being S.B. Civil Execution Second Appeal No. 12 of 1976. The said appeal was allowed by the High Court relying on the Full Bench decision of the High Court in *Devkinandan v. Roshan Lal* (1984 RLR 709). On the prayer of the appellant one year time was granted, on the expiry of which possession of the said premises shall have to be delivered. A written undertaking to that effect had been filed by the appellant in compliance with the directions of the court.

6. The appellant thereafter filed the instant appeal on special leave.

7. The following two questions come up for consideration in this appeal :

(i) whether a tenant of a mortgagee can continue as a tenant after redemption of the mortgage decree until he is evicted from the suit premises in accordance with the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950; and

(ii) whether the tenancy created in favour of the appellant can be deemed to be an act of ordinary prudence on the part of the mortgagee in managing the property falling within Section 76-A of the Transfer of Property Act.

8. Identical questions fell for consideration in *Mahabir Gope v. Harbans Narain Singh* ((1952) 3 SCR 775 : AIR 1952 SC 205). In this case the mortgagors mortgaged agricultural lands with possession by ijara to the mortgagee to the effect that the mortgagee would cultivate the land and take the crops. The mortgagee during the subsistence of the mortgage leased out the land to a tenant. The mortgage was redeemed on payment of the mortgage debt. The mortgagor on being opposed by the tenant to have the possession of the mortgaged property, filed a suit for recovery of the possession of the land. It ultimately came up before this Court and it was held as follows :

The general rule is that a person cannot by transfer or otherwise confer a better title on another than he himself has. A mortgagee cannot, therefore, create an interest in the mortgaged property which will enure beyond the termination of his interest as mortgagee. Further, the mortgagee, who takes possession of the mortgaged property, must manage it as a person of ordinary prudence would manage it if it were his own; and he must not commit any act which is destructive or permanently injurious to the property; see Section 76, sub-clauses (a) and (e) of the Transfer of Property Act. It follows that he may grant leases not extending beyond the period of the mortgage; any leases granted by him must come to an end at redemption. A mortgagee cannot during the subsistence of the mortgage act in a manner detrimental to the mortgagor's interest such as by giving a lease which may enable the tenant to acquire permanent or occupancy rights in the land thereby defeating the mortgagor's right to khas possession; it would be an act which would fall within the provisions of Section 76, sub-clause (e), of the Transfer of Property Act.

A permissible settlement by a mortgagee in possession with a tenant in the course of prudent management and the springing up of rights in the tenant conferred or created by statute based on the nature of the land and possession for the requisite period is a different matter altogether. It is an

exception to the general rule. The tenant cannot be ejected by the mortgagor even after the redemption of the mortgage. He may become an occupancy raiyat in some cases and a non-occupancy raiyat in other cases. But the settlement of the tenant by the mortgagee must have been a bona fide one. This exception will not apply in a case where the terms of the mortgage prohibit the mortgagee from making any settlement of tenants on the land either expressly or by necessary implication.

9. It was held that the settlement was not a bona fide one and a successor of the tenant did not acquire permanent right of tenancy in the demised lands under Bihar Tenancy Act.

10. In Harihar Prasad Singh v. Mst. of Munshi Nath Prasad (1956 SCR 1 : AIR 1956 SC 305) where the mortgage was in respect of agricultural lands, this Court held :

The law is that a person cannot confer on another any right higher than what he himself possesses, and therefore, a lease created by a usufructuary mortgagee would normally terminate on the redemption of the mortgage. Section 76(a) enacts an exception to this rule. If the lease is one which could have been made by the owner in the course of prudent management, it would be binding on the mortgagors, notwithstanding that the mortgage has been redeemed. Even in such a case, the operation of the lease cannot extend beyond the period for which it was granted. In the present case, assuming that the mortgagees had the power under Section 76(a) of the Transfer of Property Act to continue the lessees under Ex. 2(a) as tenants on the lands after the termination of the period fixed therein, that would confer on them at best the status of tenants from year to year and not give them the right to continue in possession after the termination of the agricultural year during which the redemption takes place.

11. This Court while considering the ambit of provisions of Section 76(a) of the Transfer of Property Act observed in Asa Ram v. Mst. Ram Kali (AIR 1958 SC 183 : 1958 SCR 986) as follows :

The law undoubtedly is that no person can transfer property so as to confer on the transferee a title better than what he possesses. Therefore, any transfer of the property mortgaged, by the mortgagee must cease, when the mortgage is redeemed. Now Section 76(a) provides that a mortgagee in possession "must manage the property as a person of ordinary prudence would manage it if it were his own". Though on the language of the statute, this is an obligation cast on the mortgagee, the authorities have held that an agricultural lease created by him would be binding on the mortgagor even though the mortgage has been redeemed, provided it is of such a character that a prudent owner of property would enter into it in the usual course of management. This being in the nature of an exception, it is for the person who claims the benefit thereof, to strictly establish it.

12. It has been further observed that if there is a prohibition on mortgagee in letting of lands, the lease will not be binding on the mortgagors. But where there is not such prohibition the parties will be thrown back on their rights under the Transfer of Property Act, and lessees must establish that the lease is binding on the mortgagors under Section 76(a) of that Act.

13. The act of the mortgagors leasing out the lands to tenants on the terms set out in the kabuliat was held to be neither prudent nor bona fide and as such the lease was not binding on the mortgagors.

14. In *All India Film Corpn. Ltd. v. Raja Gyan Nath* ((1969) 3 SCC 79), the owner of the property in dispute known as Odeon Cinema mortgaged the property with possession to mortgagees. The mortgagor, however, migrated to Pakistan in 1947. The mortgagees leased out the property to All India Film Corpn. Ltd. with option of yearly renewal for 10 years. The property being an evacuee property, the Competent Officer after determining the mortgage charge sold the property. The respondent purchased the property but could not get possession as sub-tenants claimed benefit of East Punjab Rent Restriction Act (3 of 1949). The purchaser filed a suit for possession of the property from the head lessee and sub-lessee. It was held by this Court : (SCC p. 83, para 11)

The termination of the mortgagee interest terminated the relationship of landlord and tenant and it could not, in the circumstances, be said to run with the land. There being no landlord and no tenant, the provisions of the Rent Restriction Act could not apply any further. Nor could it be said that when the mortgagor cancelled the rent note and authorised the mortgagee to find any other tenant, the intention was to allow expressly a tenancy beyond the term of the mortgage. In this view of the matter the decision of the High Court and the court below cannot be said to be erroneous.

15. Following the above observations, this Court in *M/s. Sachalmal Parasram v. Mst. Ratanbai* (AIR 1972 SC 637 : (1973) 3 SCC 198) has observed that tenancy created by the mortgagee in possession does not survive the termination of the mortgagee's interest. After termination of mortgagee's interest the relationship of landlord and tenant does not survive and the claim of protection of Tenancy Act is not available to the tenant inducted by the mortgagee. The lease was also held to be not an act of prudent management.

16. In the case of *Om Parkash Garg v. Ganga Sahai* ((1987) 3 SCC 553) (in which one of us was a party), this Court observed that the lease in question being held to be not an act of prudent management on the part of the mortgagee within the meaning of Section 76(a) of the Transfer of Property Act, 1882, the alleged lease could not subsist after termination of the mortgage by passing of the final decree of redemption and the appellant could not take advantage of the act as there was no subsisting lease in his favour.

17. On a conspectus of all these decisions we hold that the lease given by mortgagee during the subsistence of the mortgage came to an end on the redemption of the mortgage. It is pertinent to mention that the question whether after termination of mortgagee's interest on redemption of mortgage the lessees can claim the benefit of Rent Act was considered by the Full Bench of Rajasthan High Court in *Devkinandan v. Roshan Lal* (1984 RLR 709) and the High Court following the decisions of the Supreme Court has answered that : "Tenant of the mortgagee in possession is not entitled to the protection of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 against the mortgagor after redemption of the mortgage." We fully agree with this view.

18. There is specific finding by all the courts below in the suit for redemption that the letting out of the premises to the tenant-appellant by the mortgagees is not a prudent act done in the ordinary course of the management. This finding being not challenged became final. The mortgagor-landlord is entitled to get recovery of possession. We, therefore, affirm the judgment and order of the High Court and dismiss the appeal. In the facts and circumstances of the case, there will be no order as to costs.

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