

# ALLAHABAD HIGH COURT

Paltu

Vs.

Joti Prasad

(Ex. Second Appeal No. 566 of 1956. against decree of Addl. Civil Judge, Muzafarnagar)

(V.D. Bhargava, J.)

14.02.1956. 04.10.1957

## JUDGMENT

### **V.D. Bhargava, J.**

1. This is judgment-debtor's appeal in a suit for redemption. There was one Daulat who had mortgaged four specific sir plots to one Shera on 27-2-1906. It was an usufructuary mortgage. After the execution of the mortgage Daulat executed a sale deed of his rights of redemption of these four plots to one Harnam on 14-4-1909. Harnam again sub-mortgaged these rights of redemption to one Nagina and others on 20-4-1910. Harnam's rights of redemption were put in auction and were purchased by the respondent Jyoti Prasad in a court auction. Nagina and others redeemed the mortgage and by partition among themselves Nagina got this property. The respondent thereafter filed suit No. 359 of 1950, for redemption of mortgage and obtained a decree against the appellant on 18-9-1951. Thereafter the decree for redemption was put in execution on 19-5-1952 for possession of the specific Plots. When this decree was put in execution there were objections filed by the appellant on the ground that by virtue of the coming into operation of the U. P. Zamindari Abolition and Land Reforms Act the respondent was not entitled to possession and had no right of execution of the decree.

2. The first court upheld the objections. The lower Court rejected the objections; therefore this second appeal.

3. Learned counsel for the appellant has argued that by virtue of section 4 of the U. P. Zamindari Abolition and Land Reforms Act, since the mortgage was of the Zamindari property, the respondent had no right to redeem and that the decree had become in fructuous and the only person that could execute the decree is the State. The second ground on which the decree of the lower appellate court is challenged is that by virtue of section 16 the mortgagee being the occupant and that having been recorded in 1359 Fasli as the occupant he is not entitled to be

dispossessed. Thirdly, reliance was placed on section 3 of Act XXXI of 1952 of the Uttar Pradesh Land Reforms (Supplementary) Act, 1952, which is in the following words:

"(1) Every person who was in cultivatory possession of any land during the year 1359 Fasli but is not a person who as a consequence of vesting under section 4 of the U. P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Act) has become a Bhumidar, sirdar, adhvasi or asami under sections 18 to 21 of the said Act shall be and is hereby declared to be, with effect from the appointed date:

(a) if the bhumidar or sirdar of the land was, or where the land belongs jointly to two or more bhumidars or sirdars, all of them were, on the appointed date person or persons referred to in items (i) to (vi) of sub-section (2) of section 10 of the said Act, an asami from year to year, or (b) if the bhumidar or sirdar was not such a person, an adhvasi, and shall be entitled to all the rights and be subject to all the liabilities conferred or imposed upon an asami or an adhvasi, as the case may be; by or under the said Act." It was also argued by the learned counsel for the appellant that under section 14 of the U. P. Zamindari Abolition and Land Reforms Act the appellant would not be deemed to be a legal representative of the mortgagor and could not be entitled to the benefit of section 14 and, therefore, claim possession as a mortgagor.

4. The first question that arises in the case is whether either the original U. P. Zamindari Abolition and Land Reforms Act, or its subsequent amendment by virtue of Section 3 of Act XXXI of 1952, takes away the right which had accrued to a person by virtue of a decree obtained before that date. Here in this case the decree-holder respondent had got a right of possession over this plot of land before these Acts had come into force. A right, which is accrued to a person by a decree can only be taken away by specific provision in the Act, otherwise no person can be deprived of the right which has accrued to him by virtue of a decree of a Court. No specific section has been pointed out to me by virtue of which it can be said that the right that had accrued to him for possession was taken away. This decree was not only obtained before the vesting order but even an application for execution had been filed before the vesting order. The vesting order came into operation on 1-7-1952, but the application for execution had been filed in May 1952, and if the Court would not have delayed the order the decree-holder would have got the possession before the vesting. In the circumstances, I think the decree-holder was entitled to execute the decree.

5. As regards the contention of the counsel for the appellant that by virtue of section 4 of the U. P. Zamindari Abolition and Land Reforms Act. the decree-holder had no right left, I am unable to agree with that contention. It was not his share in the zamindari property which had been mortgaged. There were specific plots which had been mortgaged and possession over those specific plots had been delivered and, therefore, the mortgagor or his representative would be entitled to get that plot back with whatever rights there may be in accordance with the U. P. Zamindari Abolition and Land Reforms Act. If it was only the right to realize the rent, which had been mortgaged, the matter would have been different. Therefore, there is no force in the

argument of the learned counsel for the appellant that by virtue of section 4 the mortgagor's representative had no rights left. Section 16 of the U.P. Zamindari Abolition and Land Reforms Act, will also not apply because firstly this is a pure question of fact which was never agitated in the courts below and this Court cannot allow that question to be raised now for the first time.

There is nothing on the record to show that the mortgagee had been in actual possession. Whether the plots were in possession of the mortgagee or they had let them out and whether there had been any entry of their names during the year 1359 F on the revenue papers or not are both questions of facts on which there is no finding of the Courts below and in the circumstances the appellant cannot argue on section 16. Moreover, I am of opinion that if a decree for possession on the basis of a mortgage had been granted, by 'virtue of the coming into operation of the Act, 'the occupant cannot be deemed to be an occupant simply because the execution of the decree had been delayed. The occupant under Section 16 means an occupant by virtue of some rights of his own and if he has no right of his own he would not be entitled to possession.

6. Section 3 of Act XXXI of 1952, of the Land Reforms (Supplementary) Act, has also no application to the facts of the present case as Section 6 of this Act specifically mentions that nothing in the Act is to apply to any land in respect of which a decree for possession had been passed and had become final' on or before the said date. Here admittedly the decree had not only been passed but an application for execution had also been made before the coming into operation of the U P. Zamindari Abolition and Land Reforms Act.

7. The object of section 14 of the U. P. Zamindari Abolition and Land Reforms Act, appears to be that in the case of a land which was originally mortgaged, no right would accrue in favour of a mortgagee. In case it was sir or khudkasht of the mortgagor at the time of the mortgage, the mortgagor or his legal representative would be entitled to possession. In case the land was not sir or khudkasht then the mortgagee could get a right by paying within six months from the date of vesting an amount equal to five times the rent calculated at hereditary rates applicable on the date immediately preceding the date of vesting and be deemed for purposes of Section 19 to have held such land on the date aforesaid as a hereditary tenant thereof at the said rate of rent. In case it was sir or khudkasht he cannot become a hereditary tenant even by paying five times the rent. Here according to the findings of both the Courts below this land was sir and khudkasht of the mortgagor on the date of mortgage. Learned counsel for the appellant had argued that though it was sir and khudkasht but the present respondents are neither the mortgagors nor their legal representatives and they are not entitled to possession under section 14. I need not go into this question whether the respondents are legal representatives or not because the respondents are not claiming any right by virtue of section 14 of the U. P. Zamindari Abolition and Land Reforms Act and, therefore, there is no question of the application of section 14. If the mortgagor or his representative in whom the right of redemption had vested had claimed by virtue of Section 14 then this question might have been relevant.

8. In the circumstances of the case, I think there is no force in the appeal. The appeal is

accordingly dismissed with costs.

9. Leave for special appeal is sought for and is granted.

Appeal dismissed.