(1972) 08 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal No. 962 of 1971

Bawa Electric Radio Service — APPELLANT

Vs

Sham Kaur and Others — RESPONDENT

Date of Decision : 17-08-1972

Acts Referred:
Transfer of Property Act, 1882 — Section 106, 111

Citation : AIR 1973 P&H 273

Hon'ble Judges : C.G. Suri, J

Bench : Single Bench

Judgement

1. The question of law involved in this regular second appeal filed by the tenant is whether the lease of a shop granted by a mortgagee in possession of the mortgaged property would be binding on the mortgagor after the redemption of the property and whether the attestation of the rent note by the mortgagor would make any difference to the proposition of law involved.

2. The shop in dispute is situated in an important commercial locality of Bhatinda City. Its owner Shri Piare Lal defendant-respondent No. 3 had mortgaged it with Shri Kanhaiya Lal defendant-respondent No. 1 and the registered mortgage deed, copy Exhibit P. 9 dated 18-12-1959 recites that the mortgage is with possession and that the mortgagee could either live in the house or lease it out. Some additional mortgage amount was raised on the property on a later date and the parties were not agreed as to whether the mortgagee had actually been delivered possession of the shop after the mortgage. This would not, however, seem to make any material difference to the ultimate decision of the suit because when the property was let out to the appellant on 4-1-1964 by the mortgagee Shri Kanhaiya Lal, it was admittedly lying vacant and the advance rent for three months was paid to him by the appellant vide the receipt, Exhibit D. 34. The appellant had executed the rent note. Exhibit D. 4 dated 4-1-1964 the same day in favour of Shri Kanhaiya Lal mortgagee. The mortgagor''s own case is that he had continued in possession of the property up to November, 1963 and

during the period of about two months that the property remained lying vacant, the possession was to be presumed to be the mortgagee in accordance with the terms and conditions of the mortgage. It may, however, appear apparent that the mortgagor had not completely cleared out of the shop up to the date of the grant of the lease in appellant''s favour and that he was keeping some built in furniture and fittings inside the shop. This furniture and fittings he had sold to the appellant for a sum of Rs. 700/- on the date of the grant of the lease by the mortgagee. The appellant had issued the receipt, Exhibit D. 1 dated 4-1-1964 for the price of the furniture etc. in favour of the mortgagor Shri Piare Lal the same day. Shri Piare Lal has reserved to himself the right to build on the first floor of the shop even during the continuance of the tenancy and this may appear to have been the reason why he had signed the rent note, Exhibit D. 4 dated 4-1-1964 as an attesting witness.

3. Shri Piare Lal sold the shop in dispute to Smt. sham Kaur plaintiff-respondent by the registered sale deed. Exhibit P. 1 dated 19-12-1967. Smt. Sham Kaur filed this suit for possession by redemption of the property. As she had impleaded the appellant as a defendant in the case, the question arose whether the appellant would be liable to be dispossessed in execution of her redemption decree. The plaintiff''s right to redeem the property had been challenged in the two Courts below but it is not seriously argued by Shri Aggarwal, the learned counsel for the appellant in this Court, that Smt. Sham Kaur has the right to redeem as she has purchased the shop from the owner mortgagor. Shri Aggarwal''s main argument is that as the lease is in appellant''s favour by the mortgagee, the lease would be binding on the owner-mortgagor or anyone deriving title from him even after the property has been redeemed. The appellant, therefore, claims protection of East Punjab Urban Rent Restriction Act and Section 106 of the Transfer of Property Act not only against the owner mortgagor but also against Smt. Sham Kaur plaintiff who has purchased the property from him.

4. I agree with Shri Aggarwal that the attestation of the rent note by the owner mortgagor would imply that he had given his consent to something but what exactly he had consented to would depend upon the intentions of the parties which can be gathered from the attending circumstances. The mortgage in Kanhaiya Lal''s favour was with possession. He had been given the right either to enjoy the possession himself or to transfer the enjoyment of that right to someone else by granting a lease. Ordinarily, this lease could last only during the period that the mortgage''s interest subsisted in the property and as soon as this mortgage was extinguished by redemption or otherwise, the rights of lessee who derived title from the mortgagee was supposed to come to an end. By the attestation of the rent note, the mortgagor could have given his consent to the grant of the lease for the normal period which was supposed to last up to the date of redemption of the property. The mortgagee had been given the right to lease out the property for this normal term and the mortgagor''s attestation of the rent note could imply that he had agreed only to the exercise of this normal right by the mortgagee. We have hardly any reason for believing, however, that

by attesting the rent note, the mortgagor had given his consent to an enlargement of the mortgagee''s normal rights to transfer the enjoyment of possession of the mortgaged property to someone for as long as he could have himself enjoyed the possession. Some evidence had been examined that the mortgagor was getting a share out of the rent that the appellant was paying to the mortgagee from month to month. It is argued that from this circumstance, we could presume that the lease was a prudent act and that the mortgagor had agreed that the lease could continue even after the redemption of the property. Both the Courts below have disbelieved the evidence with regard to the sharing of the rent by the mortgagor and the rent receipts. Exhibits D. 5 to D. 34 were being issued throughout by the mortgagee. I have, therefore, no reason to disturb the finding of the fact of the two Courts below that the rents paid by the appellant were not being shared between the mortgagor and the mortgagee.

5. A similar situation may appear to have arisen in a case that went up to the Supreme Court. In the All India Film Corpn. v. Raja Gyan Nath (1970) 72 P&H LR 578 : (AIR 1969 NSC 185) the mortgagor had given it in writing that the mortgagee was entitled to remain in possession himself or could give the property on lease to anyone else and that the mortgagor would have no objection. Relying on two earlier rulings of the Supreme Court, the Hon''ble Judges were pleased to observe as follows:--

"A general proposition of law is that no person can confer on another a better title than he himself has. A mortgage is a transfer of an interest in specific immovable property for the purpose of securing repayment of a loan. A mortgagee''s interest lasts only as long as the mortgagee has not been paid off. Therefore on redemption of the mortgage the title of the mortgagee comes to an end. A derivative title from him must ordinarily come to an end with the termination of the mortgagee''s title. The mortgagee by creating a tenancy becomes the lessor of the property but his interest as lessor is conterminous with his mortgagee interest. Section 111(c) of the Transfer of Property Act provides that a lease of immovable property determines where the interest of the lessor in the property terminates on or his power to dispose of the same extends only to the happening of any event by the happening of such event. The duration of the mortgagee''s interest determines his position as the lessor. The relationship of lessor and lessee cannot subsist beyond the mortgagee''s interest unless the relationship is agreed to by the mortgagor or a fresh relationship is recreated. This the mortgagor interest may elect to do. But if he does not, the lessee cannot claim any rights beyond the term of his original lessor''s interest. These propositions are well-understood and find support in two rulings of this Court in Mahabir Gope and Others Vs. Harbans Narain Singh and Others, and Assarm v. Mst. Ram Kali 1958 SCR 986 : AIR 1958 SC 183."

6. In spite of the written consent of the mortgagor, the lease was found not to extend beyond the date of redemption of the property. While dealing with the appellant''s contention that Section 76(a) of the Transfer of Property Act provided

an exception to the principles of law enunciated above, the Hon''ble Judges were pleased to observe that the exception applied ordinarily to the management of agricultural lands and had seldom been extended to urban properties: so as to tie it up in the hands of the lessee or to confer on them rights under special statues. It was, however, mentioned that there could again be an exception to this. The lease could continue to bind the mortgagor or persons deriving interest from him if the mortgagor had concurred in granting a lease of this type, No concurrence to the grant of the lease beyond the date of redemption was presumed from the general permission given in writing to the mortgagee to lease out the property. The mortgagor''s concurrence has, therefore, to be specific to the continuance of the lease after the date of redemption.

7. Shri Aggarwal argues that in All India Film Corpn''s case 72 PLR 578 : AIR 1969 NSC 185 the lease was found to have been an imprudent act and that was why it was not held binding on the mortgagor. This does not appear to have been the only reason given for dismissing the tenant''s appeal. It has been made clear further in paragraphs 10 and 11 of the judgment that the lease was found to have come to an end with the mortgagee''s interest in the property independently of the question whether the lease was or was not a prudent act.

8. While dealing with the argument that the appellant had the protection of the Rent Restriction Act, the Hon''ble Judges observed that the answer to this question would depend on whether it could be said that there was a tenancy to protect. As the Hon''ble judges had found that the lease had come to an end with the mortgagee''s interest in the property, there was no question of the tenants enjoying any protection under the special statute. This ruling was followed by the Supreme Court in Sachalmal Parasram Vs. Ratnabai and Others, .

9. Shri Aggarwal then relied on a Division Bench ruling of the Allahabad High Court in Habib Seth v. Kashi Nath 1969 Ren CR 65 (All), in support of his argument that there is nothing in the language of Section 76(a) of the Transfer of Property Act which may suggest that the exception is confined only to agricultural tenancies and that it could not be applied to leases of urban or commercial property. That case had been remanded to the lower Courts to find out whether the lease was or was not a prudent act. It is not known what was the final decision in that case. Even otherwise, the Hon''ble judges of the Supreme Court had clearly observed in All India Film Corpns. Case 72 PLR 578 : AIR 1969 NSC 185)(supra) that the principles of Section 76(a) of the Transfer of Property Act ordinarily applied to the management of agricultural lands and that these had been seldom applied in the case of urban property. The subject matter of the dispute in that case was a cinema building which was apparently a commercial property besides being situated in the urban area of Jullundur city. This aspect of the controversy has further been considered by a Division Bench of our Court in Rashtaria Bartan Bhandar v. Hari Kishan Kasera 1966 Cri LJ 395 and by a Full Bench in Jagan Nath Piare Lal Vs. Mittar Sain and Others, ,. In the division Bench ruling three exceptions to the general rule have been enunciated.

The exception created by Section 76(a) was found to be confined to leases of agricultural land only. It was clearly observed that different considerations apply in the matter of grant of leases of agricultural land when compared with cases of urban property. The protection against eviction afforded by the Rent Restriction Act was not given to a tenant of urban immovable property where the lease had been granted by a mortgagee whose interest in the property had been extinguished by redemption.

10. The appellant has failed to prove the mortgagor''s express concurrence to the extension of the lease beyond the date of redemption. The appeal therefore fails and is dismissed. There is no order as to costs in view of the complicated questions of law involved. The appellant is granted two months'' time to vacate the shop.

11. Appeal dismissed.

