

(1997) 01 SC CK 0012

In the Supreme Court Of India

Case No : Civil Appeal No. 4455 of 1986

Gulab Chand (Dead) by Lrs.

APPELLANT

Vs

Babulal (Dead) by Lrs. and Others

RESPONDENT

Date of Decision : 08-01-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 9

Citation : (1998) 1 JLJ 1 : (1997) 10 JT 358 : (1998) 9 SCC 211

Hon'ble Judges : G. N. Ray, J; G. B. Pattanaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment and decree dated 7-4-1983 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 19 of 1982. By the impugned judgment, the appeal preferred by the appellant was dismissed summarily at the time of admission of the appeal under Order 41 Rule XI of the CPC.

2. One Mr Narayan Prasad the predecessor-in-interest of the respondents filed a suit against Gulab Chand who is the predecessor-in-interest of the appellants herein for eviction from the disputed property on the ground that he had sublet the premises. Such suit was contested by the said Gulab Chand inter alia contending that there was no relationship of landlord and tenant between the parties and Gulab Chand himself was the owner of the property and he had obtained a loan from the said Narayan Prasad for which three documents were executed on the same day, namely, on 10-8-1962. Although, one of such documents was a sale deed in respect of the disputed premises and the other one was a rent note and the third document was an agreement to repurchase the property, all the said documents if construed properly would reveal that the transactions were essentially a mortgage in substance so far as the disputed property was concerned.

3. The trial court dismissed the said suit. But on appeal, the lower court of appeal remanded the suit for deciding the same on merits. Such order of remand was challenged by Gulab Chand before the High Court but the appeal was dismissed by the High Court on a finding that the appeal was not maintainable because the order of remand was not made under Order 41 of the CPC but it was made in the exercise of the inherent power of the Court. After remand, the suit was decreed on the basis of the rent note executed by Gulab Chand. Such decree was upheld by the court of appeal and by the impugned judgment the High Court dismissed the second appeal on a finding that the relationship of landlord and tenant is a question of fact and such relationship having been found by the courts below, should not be interfered with in the second appeal.

4. Mr S.K. Gambhir, the learned counsel appearing for the appellant, has submitted that the High Court had clearly erred in not considering the said three documents executed on 10-8-1962 for the purpose of finding out whether it was a case of out and out sale and then induction of tenancy on the basis of the rent note or whether it was a case of mortgage in substance on account of the loan advanced to the predecessor of the appellant. Mr Gambhir has submitted that the law is well settled that the construction of document is a question of law. In the aforesaid facts, the High Court was not justified in proceeding on the footing that no interference was called for against the concurrent finding of fact when such finding of fact was made on the basis of the rent note without considering other document executed on the same day. Mr Gambhir has relied on the decision of this Court in *Indira Kaur v. Sheo Lal Kapoor*, A had executed a document selling certain property to B for a certain sum. On the same day, a contemporaneous document was also executed by B in favour of A agreeing to sell the property in question within ten years of the date of the document in question by A. The possession of the property had remained with A and A was required to pay Rs 50 per month as rent to B. Considering all the said three documents, this Court has come to the finding that the transaction in question was one of mortgage in essence and substance though it was clothed in the garb of sale. Mr Gambhir has submitted that the documents executed in the instant case on 10-8-1962 are also of similar nature and if the said documents are looked into, it will be quite evident that the parties intended to secure the loan by execution of the said documents. Therefore, it was really a mortgage in essence and substance though it was clothed in the garb of transaction of sale. Accordingly, no relationship of landlord and tenant had been created between the plaintiff and the defendant and the suit for eviction, therefore, was bound to fail.

5. Mr S.S. Khanduja, the learned counsel appearing for the respondents, has, however, submitted that the documents cannot be construed as transaction pertaining to mortgage in essence and substance. It will be quite apparent from the said documents that an out and out sale was effected but the purchaser agreed to reconvey the property if the amount was paid within the stipulated period. In the meantime, the vendor was allowed to occupy the property as a tenant on execution of rent note. Mr Khanduja has also submitted that it is not

always necessary to be the owner of the property to become a landlord. The definition of landlord under the Madhya Pradesh Accommodation Control Act, 1961, includes a person as landlord even though he is not owner if he had authority to receive the rent and had inducted a tenant. Mr Khanduja has also submitted by relying on a decision of this Court in Mathuralal v. Keshar Bai, . It has been held in the said decision that on the basis of the rent note executed by the defendant, the suit for eviction was maintainable. Mr Khanduja has submitted that the courts below had come to a definite finding that the defendant had sublet the property while occupying the suit property as a tenant. In the aforesaid circumstances, the decree for eviction passed by the courts below since affirmed by the High Court in second appeal should not be interfered with by this Court.

6. We have taken into consideration the three documents which were executed between the parties on 10-8-1962 and the subsequent loan agreement executed on 1-8-1963 and agreement of sale dated 20-8-1965 executed by Narayan Prasad and another rent note executed by Gulab Chand on 20-8-1965. It appears to us on considering the said documents executed on 10-8-1962 that the transaction was in substance and essence a mortgage. It is an admitted position that later on no other sale deed was executed by Gulab Chand. Therefore, no relationship of landlord and tenant between the parties was created at any point of time. It may be indicated here that no hard and fast rule is to be laid down for determining the question as to whether separate transactions form a single transaction or not. The real intent and purpose of the documents should be judged in the facts of each case in the context of the intent of the parties and the language in which the documents are couched. Considering the said documents, we do not feel any hesitation in holding that on 10-8-1962 the parties had not really intended to effect an out and out sale of the said property but the real intention was to create a mortgage in substance and essence in respect of the suit property. Mr Khanduja has submitted that since there was stipulation of time-schedule for repurchase by the vendor the period of redemption of mortgage, even if it is held to be a case of mortgage, must be held to be 12 years and such period of 12 years has long elapsed. He has also submitted that even if it is held that in the facts of the case the right of redemption of mortgage was available up to 30 years, such right of redemption is also lost because the document was executed on 10-8-1962 and more than 30 years have lapsed. In the aforesaid circumstances, this Court should not interfere with the decree of eviction because, in any event, the appellants have lost the right of redemption of mortgage in respect of the disputed property and the property now belongs to the respondents.

7. We are, therefore, not inclined to accept such submission of Mr Khanduja. It appears to us that Mr Gambhir is justified in his contention that the courts below failed to consider the import of all the said documents executed on the same day and the High Court was wrong in holding that the finding of the courts below about the relationship of landlord and tenant was a concluded finding of fact.

When the courts below had not taken into consideration the effect of all the documents such construction of documents being a question of law was open to be agitated before the High Court in the second appeal. It is apparent that on the date when the suit was instituted, the right of redemption of mortgage was not closed. Since we have come to the finding that the transaction was in substance and essence a mortgage, it must be held that relationship of landlord and tenant was not in existence on the date of institution of the suit. Accordingly, the suit for eviction of a tenant under the Rent Control Act was not maintainable and the suit was bound to fail. We, therefore, allow this appeal and set aside the impugned judgment and decree. We, however, make it clear that we have not expressed any opinion as to the existing rights of the parties in respect of the suit property. The respondents will be entitled to withdraw the amount deposited by the appellants either in the courts below or before this Court towards the rent or mesne profit without prejudice to the rights of the parties as may be available under the law.