
(2013) 05 AHC CK 0129
In the Allahabad High Court
Case No : Second Appeal No. 2479 of 1977

Gurdeo Sahai

APPELLANT

Vs

Swarjanik Pustkalaya and Others

RESPONDENT

Date of Decision : 20-05-2013

Acts Referred:

Citation : (2013) 8 ADJ 426 : (2013) 99 ALR 610 : (2013) 6 AWC 5583 : (2013) 120 RD 516

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : S.K. Singh, Mahendra Narain Singh, Mahesh Narain Singh and V.K. Singh, for the Appellant; Rajendra Kumar, Dr. Y.K. Srivastava and Rajendra Kumar Srivastava, for the Respondent

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—This is defendant's appeal u/s 100 C.P.C. The plaintiffs-respondents (13 in numbers) (hereinafter referred to "plaintiffs") instituted original suit No. 359 of 1974 against defendant appellant Gurdev Sahai (now deceased and substituted by his heir and representative) (hereinafter referred to as "defendant") seeking a declaration that plaintiffs are tenants in house No. 1/3, Mohalla Gai Ghat, Varanasi and they cannot be evicted pursuant to a decree passed in original suit No. 195 of 1970, which will have no impact upon them. Sri K.D. Rai, City Munsiff, Varanasi dismissed the suit vide judgment dated 8.5.1975 whereagainst two appeals were filed i.e. civil appeal No. 360 of 1975 by plaintiff-respondent No. 1 and 364 of 1975 by rest of the plaintiffs.

2. Sri A.B. Hajela, learned Additional District & Sessions Judge (V Court), Varanasi vide judgment dated 24.8.1977 has allowed both the aforesaid appeals, hence this appeal by the defendant.

3. This Court formulated following two substantial questions of law:

1. Whether defendant-appellant was entitled to dispossess the plaintiff-

respondent in execution of his decree for redemption of mortgage?

2. Whether the act of mortgagee of letting out the property was a prudent act?

4. Sri M.N. Singh, learned counsel appearing for the defendant appellant contended, when tenants are inducted by mortgagee after redemption of mortgage, the tenants cease to have any right to continue to stay in the tenanted accommodation and therefore, are liable to be evicted and placed reliance on Apex Court's decision in Carona Shoe Co. Ltd. and Another Vs. K.C. Bhaskaran Nair, and Hariram Lehrumal Sindhi Vs. Anandrao Narayanrao Mukati and Others, .

5. Per contra, Sri R.K. Srivastava, learned counsel appearing for respondents submitted that finding has been recorded by lower appellate Court that mortgagee's act of letting the house was a prudent act and it is a finding of fact. That being so, tenants of mortgagee are protected u/s 76(a) of Transfer of Property Act, 1882 (hereinafter referred to as "1882 Act") and they cannot be evicted at the time of redemption of mortgage. Their tenancy would stand permanent as the mortgagee has created tenancy in a prudent manner. Reliance is placed on two judgments in Habib Seth Vs. Kashi Nath and others, and Manzoor Husain and others v. Mir Khan and others, 1974 ALJ 274. He further contended that after 60 years of tenancy, plaintiff-respondents are protected under the rent statute which is a special statute and gives fresh rights to the tenants hence he cannot be evicted and placed reliance on Apex Court's decision in Mahabir Gope and Others Vs. Harbans Narain Singh and Others, .

6. From record, the undisputed facts borne out are that house No. K1/3 (old No. 66/43) initially belong to Mahadeo Dutt, father of Gurudeo Sahai, the defendant-appellant. He executed a usufructuary mortgage on 14.8.1922, of the aforesaid house, for a consideration of Rs. 7,000/-, in favour of Smt. Rani Jagannath Kunwar, widow of Raja Bahadur Sarpal Singh of Tiloi State of Rai Bareli district. The mortgagee died on 7th August, 1933. The plaintiffs though initially claimed that they were let out different portions of house in question by Sri Mahadeo Dutt but this fact could not be proved by plaintiffs before Courts below. The lower appellate Court has found that none of the plaintiffs could prove commencement of their tenancy before 14th August, 1922 i.e. the date on which the mortgage deed was executed. A finding of fact has been recorded by both the Courts below that their tenancy rights have come into existence on various dates after 1922 and therefore, their basic contention that any or all the plaintiffs were tenants of erstwhile owner of building namely Mahadeo Dutt is not correct. On the contrary, what has been found proved is that tenancy of plaintiffs had arisen at different points of time during the period when the property was under mortgage. In other words, plaintiffs have been found to be tenants inducted by mortgagee. Moreover, neither there is any pleading nor any evidence has come on record that plaintiff-tenants were inducted by mortgagee with the consent and permission of mortgagor. It is in this background, rights of plaintiffs to continue with tenancy rights after redemption of tenancy in dispute had to be considered.

7. There is nothing on record to show that mortgage deed contains any clause or stipulation, protecting rights of tenants to be inducted or may be inducted by mortgagee to continue to enjoy tenancy rights even after redemption of mortgage. For redemption of the building, defendant-appellant instituted suit No. 195 of 1970, which was decreed. The compromise decree clearly provided that mortgagee shall deliver vacant possession of building in dispute to the decree holder. In these facts and circumstances, I find the Apex Court's decision in *Pomal Kanji Govindji and Others Vs. Vrajilal Karsandas Purohit and Others*, wherein the Court held that except in cases where the leases specifically and categorically make exceptions in favour of the tenants that they would continue to be in possession even after expiry or termination of mortgage, and those leases are acts of prudent management, the tenants inducted by mortgagee would be entitled to protection under the Rent Act after redemption of mortgage and, in no other cases, would cover the issue in question.

8. The well established law elaborating rights between mortgagor and mortgagee includes proposition that mortgagor had a separate and distinct interest. He is not the successor-in-interest of mortgagee. An interest created by a mortgagee shall wipe out on redemption of mortgage or expiry of period of mortgage, unless and until a different stipulation is made and provided in mortgage deed itself, in respect of such interest. The mortgagor, on redemption of mortgage, gets back his own right. Interest, if any, created by mortgagee on mortgagor's right must disappear on ceasing of interest of mortgagee. In *Corona Shoe Co. Ltd. and another* (supra) the Court said that cessation of rights of tenants created by mortgagee is not like cessation of a contractual tenancy so as to attract rent statute. The limited estate created in favour of mortgagee having disappeared, all rights emanating from that limited estate disappear. The superior right of mortgagor comes, not in place of mortgagee, but, as a result of an independent title, and as such the mortgagor cannot be bound by any act created or any relationship contracted between the mortgagee and the tenant, unless it is permitted by the mortgage-deed. Referring to Section 60 of Act, 1882 the Court observed that mortgagor's right of redemption and mortgagee's right of foreclosure or sale are co-extensive. The mortgagor is not the successor-in-interest and does not come in place of mortgagee but by virtue of his independent title.

9. In a case where tenant has been inducted by mortgagee on his own without there being any stipulation in mortgage deed, protecting tenant's right to continue with tenanted accommodation even after redemption of mortgage, will not create a relation of "landlord" and "tenant" between mortgagor and tenant since he was a tenant inducted by mortgagee, a person having a limited right which extinguishes on redemption, causing extinction of tenancy rights of the tenant also. In *Pomal Kanji Govindji* (supra), the Court said that in respect of urban immovable properties, the tenants do not get any protection after redemption of mortgage. Looking to the definition of "landlord" under Act, 1972, which was *pari materia* to definition of "landlord" u/s 2(3) of Kerala Buildings

(Lease and Rent Control) Act, which was up for consideration before Apex Court in *Corona Shoe Co. Ltd.* and another (*supra*), I find that the said definition clearly shows that between tenant and mortgagor, there was never any landlord and tenant relationship. In absence of any stipulation in mortgage deed, original mortgagor cannot be forced to treat the tenant inducted by the mortgagee to be his tenants after redemption of mortgage.

10. Following the aforesaid dictum, in *Hariram Lehrumal Sindhi v. Anandrao Narayanrao Narayanrao Mukati* (*supra*) Madhya Pradesh High Court concluded, where a mortgage comes to an end by redemption, then the mortgagor gets back his own right not as successor-in-interest of mortgagee. The interest, if any, created by mortgagee on mortgagor's right must disappear on ceasing of interest of mortgagee and consequently, a lessee from such a mortgagee cannot be said to be either tenant of the mortgagor, nor can the mortgagor be called to be a landlord.

11. Then comes the question of application of Section 76(a) of Act, 1882, which has been relied by lower Appellate Court to hold that since it was a prudent act by the mortgagee, therefore, the leasehold right should survive.

12. I find that on this aspect also, answer is provided in *Corona Shoe Co. Ltd.* (*supra*) which has been crystallised in *Hariram Lehrumal Sindhi* (*supra*), in para 24, as under:

The questions of protection under the Rent Act and of Section 76(a) being an exception to Section 111(c) of the Transfer of Property Act to give to the tenant right to continue in possession after the expiry of the mortgage on redemption are inter-linked. In view of the aforesaid dictum of the Supreme Court no categorical and specific clause was either pleaded or contended even now on behalf of the tenant to be presented in the mortgage-deed to enable the tenant to continue in possession after the redemption. Therefore, there was no question in the facts of the present case, of an act of prudent management. The law laid down by the Supreme Court is thus clear that where the right of the tenant to continue in possession of the property under the lease by the mortgagee is conterminous with the mortgage, there is no question of an exception u/s 76(a) vis-?-vis Section 111(c) of the Transfer of Property Act. A question of such exception will arise only where a clause in the mortgage-deed categorical and specifically provides a right to continue in possession after redemption. That is not the position in our case. Consequently the learned lower appellate Court was right in not allowing the amendment application as the question was wholly inconsequential in view of the law laid down by the Supreme Court.

13. I find myself in respectful agreement with the aforesaid view.

14. In view of the aforesaid decision of Apex Court, which is binding on this Court, authorities cited at the bar, on behalf of plaintiff-respondent, cannot render any help to him.

15. The question No. 1, therefore, is answered in affirmative holding that defendant-appellant was entitled to dispossess plaintiff-respondent in execution of decree for redemption of mortgage. The question No. 2 is answered by holding that occasion would arise only where a clause of mortgage deed categorically and specifically provides right in favour of tenant to continue in possession after redemption and not otherwise. In view of the above, judgment and decree of lower Appellate Court cannot sustain. The appeal is allowed. The judgment of lower Appellate Court dated 24.8.1977 is hereby set aside and that of Trial Court is hereby restored and affirmed. In the result, suit No. 359 of 1974 of plaintiffs-respondent stands dismissed.