
(1936) 09 AHC CK 0028
In the Allahabad High Court

Jamoon

APPELLANT

Vs

Pt. Chakradhar Jayal Zamindar

RESPONDENT

Date of Decision : 23-09-1936

Acts Referred:

Citation : (1936) 09 AHC CK 0028

Final Decision : Dismissed

Judgement

1. These are appeals by defendants arising out of a suit brought by the plaintiff for a declaration u/s 123(a), Agra Tenancy Act, that certain leases in their favour are not binding on the plaintiff and that the defendants are merely statutory tenants and not permanent lessees. It appears that the former owner of this village had made a mortgage in favour of the Delhi and London Bank, which brought a suit for sale on the basis of the mortgage-deed. A preliminary decree was obtained which was followed by a final decree on 23rd February 1918. While the decree was still pending for execution, the mortgagor, in the month of February 1922, granted a large number of permanent leases of lands which were part of the mortgaged properties. He accepted premiums from the lessees. Under these leases the lessees were empowered to use the lands in any way they liked in perpetuity, namely, either to cultivate them or even to build houses upon them. In the execution department apparently one of the lessees in the year 1924 requested that the execution Court should announce the lease in the proclamation of sale.

2. The decree-holder protested that the lease was pendente lite and was not binding upon him. We do not know whether the other lessees at all approached the execution Court. All that we know is that in the proclamation of sale under which the properties were ultimately sold at auction these leases were not referred to at all. The present plaintiff purchased the property. Objections taken by the judgment-debtor were overruled and the sale was confirmed. The only question that arose for consideration was whether these leases were binding on the plaintiff or whether they were voidable at his option by virtue of Section 52,

Transfer of Property Act. All the Courts have decided against the defendants. A learned Judge of this Court in disposing of the second appeals has pointed out that by the creation of these permanent leases over a large area of 73 bighas at a low rate of rental and by taking large sums as nazrana the value of the property would be appreciably decreased if the leases were to be upheld. He has distinguished the case in *Adanki Teli v. Moti Chand* (1912) 16 I.C. 102 on the ground that no premium had been taken on the leases in that case, and has accordingly applied the provisions of Section 52 in favour of the plaintiff.

3. It seems to us that the view taken by the learned Judge is perfectly correct. These leases cannot be called leases which were granted in the ordinary course of management as, for example, leases for agricultural purposes for a short period. They were permanent leases of land granted in perpetuity on the receipt of substantial nazrana. Undoubtedly they were transfers of Immovable property within the meaning of Section 52, T.P. Act. Under that section the property which is the subject matter of a dispute cannot be transferred or otherwise dealt with by the mortgagor so as to affect the rights of any other party thereto under any decree or order which may be made therein. In spite of these leases therefore the mortgagee decree-holder was entitled to sell the property free from this hindrance and fetter. The auction purchaser who has crept into the shoes of the mortgagee had a perfect right to purchase the property in execution of the mortgage decree free from any such hindrance. It was the duty of the permanent lessees to see that the mortgage was redeemed and the sale of the property prevented. If they failed to do that and allowed the property of the mortgagor to be sold, then being transferees pendente lite, they have no locus standi in resisting the claim of the auction-purchaser who must be deemed to have purchased the property by avoidance of such leases. The only other point urged is that there is some sort of estoppel against the auction-purchaser on account of something that was said or done in the execution proceedings. The argument is based on certain vague inferences drawn from a few documents. There is nothing definite to show that the decree-holder put up for sale only the lessor's interest in these properties or that the auction-purchaser was aware of the fact that only the lessor's interest was being sold and the leases will remain intact.

4. The learned advocate for the appellants has relied strongly on the case in *Adanki Teli v. Moti Chand* (1912) 16 I.C. 102, which has been distinguished by the learned Judge of this Court. That was a somewhat peculiar case in which there was one sale deed in respect of certain trees and their produce without purchasing any right in the land and on condition of paying ground rent for the land; there was another very trivial transaction relating to four trees for a petty sum, the terms of the sale being similar to those of the first one. There was no doubt a perpetual lease, but under it the rent was increased from an old rent to a substantial amount which was found by the lower Courts to have been a perfectly genuine transaction and was the best way of dealing with the land at the time. The judgment does not mention that there was any transfer of any interest in land which had been affected and which would bring the case within the purview

of Section 52, T.P. Act. The Bench thought that the transaction was perfectly fair and in the ordinary course of management of zamindari property and actually considered that in that case the plaintiffs must be deemed to have purchased the property with notice; though if notice was presumed merely from the fact of registration there may be some doubt as to the inference.

5. On the special facts of that case it was held that those leases could not be avoided by the auction-purchaser who had taken the properties with notice of such leases as these were in the ordinary course of management. On the other hand in a much later case in Nisar Husain and Another Vs. Sundar Lal and Others another Division Bench of this Court laid down that where a lease is executed after a decree for sale has been passed on a mortgage which comprises the property leased, the lease cannot enure beyond the time when the mortgaged property, was sold in execution of the decree, and can be avoided by the purchaser u/s 52, T.P. Act. Several earlier cases of this High Court were relied upon in support of that view. We think that there is no force in these appeals. We accordingly dismiss them with costs.