

(1993) 01 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Revision Petition No. 645 of 1991

Malam Singh Chaudhary

APPELLANT

Vs

Sunderlal Bondia

RESPONDENT

Date of Decision : 07-01-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2

Citation : (1993) 1 RLW 705 : (1993) 1 WLC 412 : (1993) WLN 9

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—A short but interesting question is raised in this Revision Petition as to what should be the basis for valuating a suit for the purpose of deciding pecuniary jurisdiction of the court to entertain it in a case, where a suit for eviction against the occupant of the property is filed by a person who is assignee of the property from mortgagee and the person in occupation is a tenant, inducted by the mortgagee, whether the suit is to be valued as rent eviction suit or as a suit for possession against mortgagee simpliciter, is the question?

2. The brief facts of the case are that the present petitioner was inducted as a tenant of the shop situated in Udaipur by one Dalchand Parmar. The said shop was mortgaged with Dalchand Parmar by the present plaintiff-respondent Sunderlal. Sunderlal redeemed the mortgage and thereafter filed the present suit for evicting Malam Singh, defendant from the suit shop. He alleged in his plaint that since the defendant was inducted as a tenant by the mortgagee, said tenancy does not survive after redemption of mortgage because a tenant inducted by a mortgagee does not become ipso facto tenant of the mortgagor as well, and, therefore, the defendant is also not entitled to protection of the Rent Control Laws. In the alternative, the plaintiff has also claimed relief on the basis of tenancy. For the purposes of jurisdiction and court-fee, the plaintiff valued his

suit as a rent ejectment suit and paid the court-fee accordingly.

3. The defendant in his written statement, raised objections about the valuation and court-fee. His objection was that the present suit is, primarily, a suit for possession simpliciter and is to be valued as a suit for possession on the market value of the property. On the pleadings of the parties, among other issues, issue No. 5 was framed as under:

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4. The trial court by the impugned order, has decided the said issue that merely because the plaintiff pleads that the defendant is not entitled to protection of the Rent Control laws, does not mean that the plaintiff is liable to pay court-fee as title-suit. For arriving at this conclusion, the trial court has relied on decision of this Court rendered in the case of Smt. Gauri and Others Vs. Smt. Brijkanwar Devi,

5. Learned Counsel for the defendant-petitioner has submitted that in his pleadings, the plaintiff has not accepted that any relationship of land-lord and tenant exist between the parties. The suit cannot be constituted as a suit for eviction, based on tenancy. He also contends that on redemption of mortgage, on the basis of which the plaintiff became entitled to get back the possession from the mortgagee, if the plaintiff was to file suit against the mortgagee for possession in case mortgagee failed to deliver possession, whatever be the nature of that suit, will also be the nature of the suit which is filed against any person who occupies the premises as transferee or assignee of the mortgagee, and the suit ought to be valued and subjected to court fees accordingly, in the like manner. In support of his submission, learned Counsel for the petitioner relied on decisions in Devkinandan and Another etc. Vs. Roshan Lal and Others etc., and in Carona Shoe Co. Ltd. and Another Vs. K.C. Bhaskaran Nair, .

6. Learned Counsel for the respondent, on the other hand, supported the order of the trial court and placed reliance on Smt. Gauri and Others Vs. Smt. Brijkanwar Devi,

7. I have considered the rival contentions of the parties. There is no dispute and there cannot be a dispute in view of the Full Bench decision of this Court in Devkinandan's case (supra), wherein the Court, after considering a catena of Supreme Court decisions, expressed view regarding proposition of law that, in case there a mortgaged property, such tenancy is not protected under the Rent Control Act, after the mortgagor has redeemed the property from mortgagee and that, after such redemption, the relationship of landlord and tenant, between the mortgage and his tenant extinguished, without any new relationship of landlord and tenant coming into existence between the mortgagor and the erstwhile tenant of the mortgagee except in certain circumstances.

8. Regarding what will be the nature of suit filed by a mortgagor after redemption of the mortgage, against the erstwhile tenant, their Lordships of

Supreme Court in Carona Shoe Co. Ltd. 's case (supra), observed:

...We are of the opinion that between the appellants and the respondent, there was never any landlord and tenant relationship. The appellants were never the tenants of the respondent.... The respondents, the original mortgagor, would never after the redemption of the mortgage have treated the appellants to be tenants. There was no relationship ever between the appellants and the respondent. The mortgagor had a separate and distinct interest which was wiped out, on the redemption of mortgage or expiry of the period, of mortgage. The mortgagor on redemption of mortgage gets back his own right, he is not the successor-in-interest of the mortgagee (emphasis supplied). Interest, if any, created by the mortgagee on the mortgagor's right must disappear on ceasing of interest of the mortgagee....

9. From the above observation, it is apparent that the suit for eviction against the tenant of the mortgagee is not traceable to any relationship created by the mortgagee or any right of the mortgagor, as his (mortgagee's) successor-in-interest, but, the suit is for recovery of property by the mortgagor in exercise of his own right to ownership, from a person who is not his tenant. The pleadings of the plaintiff, in the present case are also to the same effect. The plaintiff has not accepted in his pleadings that any of the exceptions under which tenancy created by mortgagee survive after redemption of mortgage qua him. The question of court-fee and suit valuation has to be determined on pleadings in the plaint and not on the basis of defence taken in the written statement. Where a plaintiff claims two reliefs, which are not based on separate and distinct cause of action, but are claimed in alternative on the same cause of action; the valuation of suit for the purposes of court-fee in such cases is to be determined by higher of the two reliefs claimed. Present is a case where plaintiff has claimed the same relief of possession, primarily on the basis of his right to recover possession on redemption of mortgage from the mortgagee or his assignee, alternatively, he has also claimed that even if on the facts alleged by him, tenancy is held to survive after redemption of mortgage, he is still entitled to the relief as a landlord, as, cases also, in my opinion, the suit has to be valued as per that relief, which is higher.

10. Therefore, in my opinion, the present suit cannot be treated to be a suit based on tenancy and its termination, but for recovery of possession by the mortgagor of the property from a person holding possession as an assignee of mortgagee, whose right to remain in possession has extinguished on redemption of mortgage.

11. The decision relied on by the trial court is of no assistance to the plaintiff for the present purposes. That was a case where the legal representatives of the deceased-tenant sued eviction by the landlord, who has inducted the predecessor of the defendants as tenant. The Court while holding that legal representatives of the tenant who had died prior to filing of the suit, but after determination of tenancy, are not entitled to protection of the Rent Control laws, but none the

least, held that the heirs of the deceased tenant whose tenancy had been determined before his death, could be sued in the like manner the deceased tenant himself could have been sued, as after the tenant's death it is his heirs who represent his estate within the meaning of Section 2(11), CPC. It is on this premises, it was further held that so far as the sueability of legal representatives on the death of a deceased tenant is concerned, the matter was left to be governed by the general law as no provision to the contrary was made in the Act- Thus, the ratio of decision in Mst. Gauri's Case (supra) is that as the defendants were to be sued as representing the estate of the deceased tenant, the same court fee would be payable as it was if the suit would have been filed against the original tenant while he was alive. This principle rather helps the case of the petitioner-defendant than of the plaintiff. As has been observed above, the law is settled by the Apex Court that a mortgagor on redemption of mortgage does not become successor-in-interest of the mortgagee, but asserts his own rights, and, it is the tenant who has been inducted by the mortgagee and is in occupation as his assignee, is under obligation to surrender possession to the mortgagor as a representative of the mortgagee. Therefore, the suit against the tenant of a mortgagee, has to be treated in the like manner for the purposes of sueability and for the purposes of jurisdiction and court-fees; as a suit by mortgagor is to be treated if filed against the mortgagee after redemption for recovery of possession.

12. In my opinion, the suit of the plaintiff in the present case, has to be constituted as a suit for possession against mortgagee or his assignee who has failed to deliver possession even after redemption of mortgage and has to be valued accordingly and be subjected to court-fees in the like manner.

13. As a result of aforesaid discussion, the Revision Petition is allowed. The order under Revision is set aside. It is left to the trial court to decide the question as to what should be the correct valuation of the suit and what should be the consequences thereof, in accordance with law. Since the issue of valuation of the suit and court-fee payable thereof, is to be decided only on the basis of averments made in the plaint, the decision on this issue will not affect the decision on other issues raised in the suit as a result of observations made, while deciding issue No. 5.

14. There will be no order as to costs.