(1980) 12 PAT CK 0010

In the Patna High Court

Case No : A.F.A.D. No. 42 of 1975

Manju Kuer and Others — APPELLANT

Vs

Ramratan Singh and Others — RESPONDENT

Date of Decision : 16-12-1980

Acts Referred:

Bihar Tenancy Act, 1885 — Section 26N
Transfer of Property Act, 1882 — Section 91

Citation : AIR 1981 Patna 153 : (1981) 29 BLJR 625 : (1981) PLJR 235

Hon'ble Judges : Chaudhary Sia Saran Sinha, J

Bench : Single Bench

Advocate : R.S. Chatterjee, Sidheshwar Prasad and Naresh Kumar Sinha, for the Appellant; Ram Suresh Roy, Dhurandhar Pd. Choudhary, Rajendra Kishore Prasad, Banwari Sharma and Drona Charya, for the Respondent

Final Decision : Dismissed

Judgement

Chaudhary Sia Saran Sinha, J.—This is defendants'' second appeal against the judgment of affirmance passed by the learned 1st Additional Subordinate Judge, Patna, in appeal, arising out of a suit for redemption with further prayer for recovery of possession and mesne profits.

2. In view of the limited contentions raised before this Court, relevant facts may be shortly stated as follows: Survey Plot No. 7 measuring 52 decimals lying in village Kathautya, undisputedly, belonged to one Kuldeep Singh. Kuldip Singh, the owner in possession, gave this land, which is in dispute, in usufructuary mortgage to Chabilchand Singh, father of defendants 1 to 3, by a deed of Rehan (Ext. 3) dated 4-2-1921. On 2-5-1922 Kuldeep Singh sold the equity of redemption of the suit land along with other lands to Murat Singh, father of the plaintiffs. The plaintiffs alleged that, after purchase of the equity of redemption by them from Kuldip, there was a settlement between Murat Singh and the mortgagee under Ext. 3 that the liability to pay rent for the suit land would be of the mortgagee.

3. One Alakh Narain, an ex-intermediary, in whose share the suit land had exclusively fallen in the Colleotorate partition, brought Rent Suit No. 971 of 1935 against Kuldeep Singh for rent for four years from 1339 to 1342 Fasli. The purchaser of the equity of redemption Murat Singh, whose name was mentioned in the Batwara papers (Ext. 9), was not impleaded as defendant in this rent suit. The rent suit was decreed. The trial Court has found that the decree was obtained by suppressing all processes in the suit. This decree was put in execution by the ex-intermediary, abovenamed, in Execution Case No. 117 of 1937. The judgment-debtor was mentioned as Kuldeep Singh. According to the case of the defendants, there was an auction sale sometime in the year 1937 and the ex-intermediary himself purchased the holding including the suit land at auction. The defendants further alleged that the auction purchaser landlord remained in possession of the suit land for about two years and then in Jeth 1347 fasli he settled the suit land orally with the sons of the original mortgagee. The further case set up by the defendants was that Kuldeep Singh, the mortgagor, had redeemed the mortgage in question in Jeth 1930 fasli, a fact which was disputed by the plaintiffs.

4. The plaintiffs tendered the Rehan money. It was refused by the defendants, heirs of the mortgagee. The Rehan money was then deposited in a proceeding u/s 83 of the Transfer of Property Act and, lastly, the plaintiffs instituted the instant redemption suit in the year 1962 with the prayers, abovementioned, and the suit was contested by the defendants including Kuleep Singh.

5. On a consideration of the evidence adduced and the circumstances arising therefrom, the trial Court found all the facts in favour of the plaintiffs and decreed the suit, as prayed for. The defendant took up the matter in appeal, but the lower appellate Court, confirming all the findings of facts, recorded by the trial Court, dismissed the appeal. The defendants have now taken up the matter before this Court in second appeal.

6. The sole contention of Shri R. S. Chatterjee, the learned counsel for the appellants, was that the ex-intermediary, Alakh Narain, who instituted Rent Suit No. 971 of 1935, was not bound in law to recognise the transfer evidenced by Ext. 4, the sale deed dated 2-5-22 executed by Kuldeep Singh in favour of Murat Singh transferring the equity of redemption in the suit land. This contention was stubbornly resisted by Shri R. S. Roy, the learned counsel for the respondents.

7. If I may say so, the matter stands concluded by the concurrent findings of fact recorded by the two Courts below which findings of fact appear to have been correctly recorded on a proper consideration of the evidence and the circumstances arising therefrom and reasonably enough Shri R. S. Chatterjee did not challenge those findings of fact.

8. Certain facts are undisputed. They are that the disputed land belonged to and was in possession of Kuldeep Singh. Kuldeep Singh gave this land in usufructuary mortgage to Chhabilchand Singh for a consideration of Rs. 280/- under Ext, 3.

Subsequently, on 2-5-1922, Kuldeep Singh sold the equity of redemption in the disputed land along with other two plots to Murat Singh, father of the plaintiff. It is further undisputed that, in the year 1935, there was a rent suit by the ex-intermediary against Kuldeep Singh in which a decree was obtained which was put into execution leading to an auction sale, the ex-intermediary himself being the auction purchaser.

9. In order to justify the institution of the rent suit by the ex-intermediary against Kuldeep Singh, the defendants set up a plea that, in Jeth 1930 Fasli, Kuldeep Singh had redeemed the mortgage (Ext. 3). This redemption story has been disbelieved by the two Courts below and in my opinion rightly. The plaintiffs challenged the validity of the decree obtained in the rent suit and the auction sale held thereunder and alleged that the ex-intermediary never came in possession of the suit land. Consequently the plaintiffs also challenged the story of settlement of the suit land by the ex-intermediary with the defendants. This part of the story too stands concluded by the concurrent findings of fact, the findings being that the story of redemption set up by the defendants is a myth, that the ex-intermediary never came in possession of the disputed land, the delivery of possession being a sham transaction and the story of settlement alleged by the defendants was false. The two Courts also concurrently found that the mortgage evidence by Ext. 3 existed intact and the plaintiffs being the heirs of Murat Singh, the purchaser of equity of redemption under a valid sale deed (Ext. 4) executed for consideration, was entitled to redemption and to the other reliefs sought for by him. Faced with these concurrent findings of fact, Shri R. S. Chatterjee, raised the sole contention abovementioned.

10. Kuldeep Singh sold the equity of redemption of the suit land to Murat Singh on 2-5-1922 under the sale deed (Ext. 4), that is to say, prior to the Ist January, 1923. The law, as it stood, after the amendment introduced by Act 8 of 1934, which was repealed by the Bihar Tenancy (Amendment) Act, 1938, was that the landlord''s consent to transfer of occupancy-holding made before Ist January, 1923, shall be deemed to have been given. In such a situation the story of redemption set up by the defendants having been disbelieved and Ext. 4 being a genuine sale deed for consideration, the tenant in respect of the suit land in the year 1935 was Murat Singh and Kuldeep Singh cannot, therefore, represent the holding. As stated above, in fact, in the Batwara paper (Ext. 9), we also find the name of Murat Singh therein. If under the law the consent of the ex-intermediary to the transfer evidenced by Ext. 4 shall be deemed to have been given, there was no option for the ex-intermediary but to file the rent suit, if any, against Murat Singh, the transferee of equity of redemption. The suit, however, was, undisputedly, filed against Kuldeep Singh who by then ceased to represent the holding. Then again, the finding of the trial Court is that all the processes of the rent suit and the execution case were suppressed. Thus the decree in question obtained against Kuldeep Singh cannot be regarded as a legal and valid decree and any auction sale held in pursuance of such a decree cannot extinguish the Rehan deed vaiidly executed.

11. Learned counsel for the respondents cited a decision of the Privy Council reported in AIR 1935 139 (Privy Council) where their Lordships of the Privy Council held as follows:--

"Where certain property sold was shown in the bid sheet to be the property exclusively belonging to the judgment-debtors, but at the time of the sale the title to the property sold was not in the judgment-debtor but in another. The sale was a nullity."

12. Learned counsel for the appellants, on the other hand, relied on a Division Bench decision of this Court reported in 1956 BLJR 70, Smt. Lalpari Kuer v. Chitranjan Prasad. Their Lordships of this Court held in this case that where neither landlord''s transfer fee has been paid nor has notice been given to the landlord, the transfer is not valid or operative against the landlord. The position of such transferees is no better than that of trespassers as against the landlord and that the landlord cannot be forced to bring a suit against such trespassers for rent. Lastly, their Lordships held that the decree obtained in the rent suit and the sale held thereunder against the heir of the original raiyat cannot be challenged by such transferees.

13. The principle of law laid down in this case was not disputed and, in fact, it could not be disputed in view of the provision of Section 260 of the B. T. Act since repealed. Learned counsel for the respondents, however, distinguished this case inasmuch as the deed of transfer in that case came into existence on the 16th of September, 1932, that is to say, after the Ist January, 1923, the time fixed in the then existing provisions of Section 26N. This being the position, this decision can be of no avail to the appellants in the in-stant case. In such a situation, the auction sale held in pursuance of the decree obtained in Rent Suit No. 971 of 1935 cannot extinguish the mortgagee evidenced by Ext. 3 and, as rightly found by the two Courts below, it must subsist and the plaintiffs having purchased the equity of redemption as far back as in the year 1922, they must be held entitled to redemption with the consequential reliefs prayed for by them and rightly allowed by the two Courts below.

14. There is, thus, no merit in this second appeal which must fail and it is accordingly dismissed. The judgment, and decree of the lower appellate Court is hereby confirmed. In the facts and circumstances of this case, however, there shall be no order for cost of the second appeal and the parties shall bear their own costs.

