
(1964) 09 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 789 of 1963

Mathra Puri and Another	Vs	APPELLANT
Hukam Chand and Others		RESPONDENT

Date of Decision : 02-09-1964

Acts Referred:

Transfer of Property Act, 1882 — Section 76

Citation : AIR 1965 P&H 231

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Judgement

(1) In this second appeal the only question that has been debated before me is covered by issue No. 5 which is in these terms:

"5. Whether the plaintiffs got the land redeemed for Pratap Chand if so what is the effect on the tenancy of the defendants?"

This facts of this case are that the land in dispute which was owned by the defendants Mathra Puri and Somwar Puri was mortgaged by their mother Mst. Partapi when they were minors to secure an advance of Rs. 3, 421. This amount was due by the husband of Mst. Partapi to the father of the defendants Hukam Chand and others on the basis of a bahi entry. The mortgage was in favour of Hukam Chand and other s plaintiff-respondents. The plaintiffs mortgaged their mortgagee rights in this land to Pratap Chand. Partap Chand inducted the respondents as tenants on the land in the year 1956. In the year 1957 the plaintiffs brought a suit for possession of the land in dispute by redemption.

The trial Court dismissed the suit holding that the defendants were not bound by the mortgage created by their mother. On appeal by the plaintiffs the trial Court's decree was the aside and it was held that he mortgage was binding on the defendants and accordingly redemption of the mortgage in favour of Pratap Chand was ordered. It appears that in the suit claim was made for possession against the defendants but that question was left open by the court and the

plaintiffs were directed to seek possession so far as defendants were concerned by a separate suit. Accordingly on 22nd October, 1959, the present suit for possession was filed against the defendants. The defendants raised the plea that they were in possession of the land as owners inasmuch as the mortgage by their mother was not binding on them. They also raised the plea that even if they were tenants they could not be evicted. The trial Court held that the mortgage by the mother was binding on the minor as it was for the minor's benefit. IT was however held that the mortgage could not be challenged by the minors as more than three years had elapsed after their attaining majority.

It was further held that the plaintiffs were in possession of the property as mortgagees for over 12 years and had got it redeemed from Partap Chand and the rights of the defendants came to an end as soon as the mortgage in favour of Pratap Chand was redeemed. Against this decision the defendants went up in appeal and before the District Judge only two contentions were advanced: (1) that the defendants were the tenants of the plaintiffs and therefore the order of redemption in their favour and against Pratap Chand did not in any manner affect them and (2) that in any case the defendants being tenants of Pratap Chand the redemption of the mortgage by the plaintiffs put an end to the defendants' tenancy because the tenancy would fall with the mortgage the tenancy having been created by the mortgagee. It is against this decisions that the present second appeal has been preferred.

(2) Mr. Jagan Nath Kaushal, learned counsel for the defendant-appellants, has rightly not contested the finding of the learned District Judge that the defendants are not proved to be the tenants of the plaintiffs. He has only confined his argument to the second contention that was raised before the learned District Judge. his contention is that the redemption of the mortgage does not put an end to the defendants who were inducted on the land by the mortgagee because the tenancy is an agricultural tenancy. In this connection he relies on the decision of the Supreme Court in *Asa Ram and Another Vs. Mst. Ram Kali and Another*, wherein their Lordships made the following observations-

"The law undoubtedly is that no person can transfer property so as to confer on the transferee a title better than what he possess. Therefore any transfer of the property mortgaged by the mortgagee must cease, when the mortgage is redeemed. Now S. 76(a) (of the Transfer of Property Act) provides that a mortgagee in possession must manage the property as a person of ordinary prudence would manage if it were his own. " thought on the language of the statute this is an obligation case on the mortgagee, the authorities have held that an agricultural lease created by him would be binding on the mortgagor even though the mortgage has been redeemed provided it is of such a character that a prudent owner of property would enter into it in the usual course of management. This being in the nature of an exception it is for the person who claim the benefit thereof to strictly establish it."

It will be obvious from the aforesaid observations that a tenancy created by the

mortgagee will not come to an end with the redemption of the mortgage necessarily. If the tenant inducted by the mortgagee contends that he continues to be the tenant under the mortgagor after redemption whether the tenants were inducted on the land by the mortgagee as a prudent owner of property in the usual course of management. This question it has to be determined on evidence. In the present case there was a specific issue on this matter and as observed by their Lordships of the Supreme Court in Asa Ram's case the rule against the coming to an end of the tenancy on the redemption of the mortgage being in the nature of an exception has to be specifically proved by the tenant inducted by the mortgagee and what he has to prove I have already indicated in the words of their Lordships of the Supreme Court.

There is no evidence on the present record from which it can be said that the defendants were inducted on the land as tenants by a person who if he had been owner of the land would as an act of prudent management have inducted them. There is no evidence as to what is the reasonable rent which the property was capable of yielding in the proper course of management and whether the tenants were inducted on the land on that reasonable rent. We even do not know what were the terms on which they were inducted. In this situation the observations of their Lordships of the Supreme Court are of no assistance to the defendants. They have failed to prove the exception and therefore the court below were right in holding that the tenancy in this case came to an end with the redemption of the mortgage. That being so there is no force in this appeal which fails and is dismissed with costs.

(3) Appeal dismissed.