

(1983) 04 BOM CK 0028

In the Bombay High Court

Case No : Civil Revision Application No. 134 of 1983

Mohmad Hussen Shamshoddin

APPELLANT

Vs

Fakruddin Abasali Momin and Another

RESPONDENT

Date of Decision : 29-04-1983

Acts Referred:

Transfer of Property Act, 1882 — Section 76

Citation : (1984) 1 BomCR 42 : (1984) MhLj 422

Hon'ble Judges : D.B. Deshpande, J

Bench : Single Bench

Advocate : C.G. Solshe, for the Appellant; B.N. Deshmukh, for the Respondent

Judgement

D.B. Deshpande, J.

1 The petitioner is a landlord of the suit-house bearing No. 18/125 situated at Osmanabad. The petitioner mortgaged this property with possession in favour of the present respondent No. 1 by a registered mortgage-deed, dated the 15th April, 1970, for an amount of Rs. 1,200/-. The mortgage was to retain and enjoy the possession of the mortgaged property till the mortgage amount was repaid to the mortgage-respondent No. 1. Possession of the house was accordingly given to the respondent No. 1 under the terms of the mortgage-deed. In 1973, the petitioner filed a regular civil suit for redemption and for possession of the suit-house. In Second Appeal No. 623/77 this Court on 14-9-1982 allowed the appeal and passed a decree for redemption in favour of the petitioner and for possession of the suit-house. The amount of mortgage is undisputedly deposited by the petitioner.

2. After obtaining this decree the petitioner filed Regular Darkhast No. 178/82 for possession of the suit-house. Respondent No. 2 filed Misc. Civil Application No. 2/83 presumably under Order 21, Rule 97 of the CPC contending that from 1-11-1972 the respondent No. 1 mortgagee introduced him as a tenant and that is why his possession is protected under Hyderabad Houses (Rent, Eviction and

Lease) Control Act, 1954, (hereinafter it is referred to as the "Hyderabad Rent Act"). On 5th January, 1983, the Decree-holder-petitioner gave an application in the trial Court for police help on the ground that while warrant was being executed obstruction was caused to the bailiff of the Court and therefore, police help should be granted. This application was Exh. 12 in the Darkhast. This application was fixed for hearing and after considering the rival contentions before him the learned Civil Judge (Junior Division), Osmanabad, rejected the application given by the petitioner-Decree-holder and this has given rise to this Civil Revision Application.

3. Mr. C.G. Solshe, appearing on behalf of the petitioner, placed reliance upon a decision of the Supreme Court in Sachalmal Parasram Vs. Ratnabai and Others, . This ruling definitely supports the contention raised by Mr. Solshe. Therein the Supreme Court has observed as follows :---

"Tenancy created by the mortgagee in possession does not survive the termination of the mortgagee's interest. The termination of the mortgagee's interest terminates the relationship of landlord and tenant. There being no landlord and tenant, the tenant cannot claim the protection of Rent Control Legislation."

Again the Supreme Court has observed as follows :---

"The principle of section 76(a) that acts done bona fide and prudently in the ordinary course of management may bind even after the termination of the title of the mortgagee in possession applies ordinarily to the management of agricultural lands and has seldom been extended to urban property. In the instant case, however, the lease was not an act of prudent management."

It will, therefore, be seen that in respect of the urban property like a house the principle of section 76(a) of the Transfer of Property Act does not apply. It is extended only to agricultural lands. Mr. B.N. Deshmukh, appearing on behalf of the respondent No. 2, placed reliance upon some observations of the Supreme Court in Para 4. These observations are from a previous decision of the Supreme Court and these observations are as follows :---

"The relationship of lessor and lessee cannot subsist beyond the Mortgagee's interest unless the relationship is agreed to by the mortgagor or a fresh relationship is recreated."

(underlining is mine).

It is not the contention of Mr. Deshmukh that the relationship of landlord and tenant is agreed to by the mortgagor but according to Mr. Deshmukh, a fresh relationship is recreated on account of provisions of the Hyderabad Rent Act and that is why Mr. Deshmukh seeks to take protection of the Hyderabad Rent Act. I do not think that this interpretation is possible. It will be seen that the Supreme Court has approved two decisions of this Court. One of them is a decision of a Division Bench of this Court in Kamlakar and Company Vs. Gulamshafi Imambhai

Musalman, . In this ruling also a monthly tenancy was created by a mortgagee in possession. Subsequent suit for redemption was filed by the mortgagor and there was a decree for redemption. It is held by the Division Bench that the tenancy terminates and tenant is not entitled to protection from eviction and that the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, does not come in the way of the decree-holder in his way of recovering possession of the redeemed property. So the question of operation of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, was very much alive before the Division Bench of this Court in Kamlakar's case and even then the Division Bench held that the provisions of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 do not come in the way of the mortgagor-decree-holder. There is another decision of a Single Judge of this Court in Bhanshali Kushalchand Ramji and Another Vs. Sha Shamji Jivraj and Others, . This ruling also supports the contention raised by Mr. Solshe. The learned Single Judge of this Court has observed as follows :---

"Sections 76(a) and (e) do not empower the mortgagee to create a lease of the mortgaged property which is to endure beyond the redemption of the mortgage itself, and it is quite clear that u/s 111(c) of the Act when the interest of the mortgagee comes to an end the lease created by him also determines, though this is subject to any rights that might be conferred or created on the tenant by any statute."

These two decisions of this Court are a clear answer to the contention raised by Mr. Deshmukh.

4. Mr. Deshmukh tried to place reliance upon a decision of the Supreme Court in Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, , but that is a case under the Bombay Tenancy and Agricultural Lands Act and relates to the mortgage of an agricultural land and hence, any principle mentioned therein would not apply to the facts of the instant case, as observed by the Supreme Court in M/s. Sachalmal Parasram's case cited earlier.

5. In order to see whether Mr. B.N. Deshmukh can derive any advantage of his contention that a fresh relationship is recreated, I have gone through the definition of the word "landlord" both in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and in the Hyderabad Rent Act. The definition of the word "Landlord" in the Bombay Rents, Hotel and Lodging House Rates Control Act is as follows :---

(3) "Landlord" means any person who is, for the time being receiving, or entitled to receive rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes persons not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant, a tenant who has sub-let any

premises; and also includes in respect of a licensee deemed to be a tenant by section 15-A, the licensor who has given such licence."

The definition of the word "landlord" in the Hyderabad Rent Act is as follows :---

(c) "landlord" includes a person who is receiving or is entitled to receive rent of a house, whether on his own account or on behalf of or for the benefit of another person or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive rent or be entitled to receive rent if the house were let to a tenant.

Explanation :---A tenant who is entitled to sub-let a house shall be deemed to be a landlord within the meaning of the Act in relation to the sub-tenant;"

(d) It will, therefore, be seen that the definition of the word "landlord" in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, is more comprehensive than the definition of the word "landlord" in the Hyderabad Rent Act and even then there are two decisions of this Court which clearly lay down that a tenant of the mortgagee in possession in respect of the urban property cannot claim any interest of a tenant vis-a-vis the mortgagor after redemption and these two rulings clearly go to show that a fresh relationship cannot be said to have been created between the mortgagor and the tenant of the mortgagee. In view of this clear position it is not necessary to make any investigation at all as respondent No. 2 is not entitled to the protection of the Hyderabad Rent Act at all and hence the order passed by the trial Court below Exhibit 12 deserves to be quashed.

6. The result is that the order of the trial Court below Exh. 12 passed on 28-1-83 is quashed and the matter is sent back to the trial Court for disposal according to law. Rule made absolute but in the circumstances there will be no order as to costs.