
(1968) 07 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 1304 of 1966

Puran Chand and others

APPELLANT

Vs

Bakshi Gopi Chand and others

RESPONDENT

Date of Decision : 26-07-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63

Citation : (1968) 07 P&H CK 0035

Hon'ble Judges : H.R. Sodhi, J

Bench : Single Bench

Advocate : S.P. Goyal, for the Appellant; B.S. Bindra and Mrs. Surjit Bindra, for the Respondent

Final Decision : Allowed

Judgement

H.R. Sodhi, J.—This regular second appeal is directed against the judgment, dated the 27th May, 1966, of Additional District Judge, Ambala, who affirmed the decree of the Trial Court and passed a preliminary decree for possession by redemption of the property in dispute.

2. In order to appreciate the question of law involved in the case, it is necessary to briefly state the facts which are not in dispute. One Mahabir Parshad son of Lakhi Ram Jain, resident of Delhi, obtained a money decree on the 22nd February, 1956, against Ghasita Ram son of Dhani Ram Vaish of Ambala Cantt. and got the same transferred from the Court at Delhi to that at Ambala for execution. In execution of the decree, the suit property of Ghasita Ram was got attached. The said Ghasita Ram had, however, sold on the 25th September, 1956, the house in dispute to Rameshwar Dass (respondent No. 2) may be, to save the same from being taken in execution of the decree. Rameshwar Dass respondent filed objections against the attachment which were allowed. The decree-holder filed a suit under Order 21, rule 63, Civil Procedure Code, in the Court of Sub-Judge Ambara, and the same was decreed on the 6th December, 1958. Rameshwar Dass respondent preferred an appeal and a compromise was

then effected between the parties on the 2eth June, 1959. In this compromise the sale in favour of Rameshwar Dass (defendant No. 1) was set aside and converted into a mortgage with possession for Rs. 1600. The house was sold in execution of the decree and purchased by Sewa Ram (Respondent No. 3) in whose favour the sale was confirmed on the 11th September, 1963 for Rs. 4500 and a sale certificate accordingly granted. Respondent No. 3 sold the house to the plaintiff Bakshi Gopi Chand (respondent No. 1) on the 12th February, 1964, by a registered sale-deed and thus the latter became the owner-mortgagor of the house entitled to redeem the same from Rameshwar Dass respondent who was the mortgagee in possession in terms of the compromise.

3. There is no dispute that when the property was with Ghasita Ram originally the appellants were tenants under him and they continued to occupy the same without a break since then. The plaintiff-respondent No. 1 on the 12th June, 1964, filed the present suit out of which this appeal has arisen for possession of the house in dispute by redemption on payment of Rs. 1600.

4. Rameshwar Dass mortgagee was impleaded as defendant No. 1 whereas the appellants who were the tenants of the suit-property were impleaded as defendants Nos. 2, 3 and 4. Sewa Ram who sold his interest to the plaintiff was impleaded as defendant No. 5. The mortgagee-defendant admitted the right of the plaintiff to redeem the property but raised a dispute only with regard to the amount. The former made an application for amendment of the written statement in order to get back on his earlier admission and raise a dispute that the transaction was not a mortgage, but this application was dismissed by the trial Court on the 10th November, 1965. Defendants Nos. 2 to 4 who are the tenants, resisted the suit on the plea that they were tenants since much before 1955 when the mortgage was executed in favour of Rameshwar Dass, defendant No. 1 and they could not be evicted in a suit for redemption. It is a common ground between the parties that when the mortgage was effected in favour of defendant No 1 fresh rent-notes were executed in his favour by the defendants-appellants and the rent they were paying earlier was reduced. It is also pleaded that a lease created by the mortgagee would be binding on the mortgagor even on redemption of the mortgage since the lease executed by him in favour of defendants Nos. 2 to 4 was such as a prudent owner of the property would enter into in the course of management of the property. On the pleadings of the parties the following issues were framed: -

- (1) At what amount is the plaintiff entitled to redeem the mortgaged property?
- (2) Whether a decree for possession cannot be passed against defendants Nos. 2 to 4 on the grounds given in para 4 of the written statement?

On issue No. 1 it was found by the trial Court that the mortgagor plain tiff Lad to pay Rs. 1600. As regards issue No. 2 it was held that the original lease by the landlord-mortgagor must be deemed to have been surrendered when fresh lent notes were executed more so because there has been a variation in the terms of

the tenancy inasmuch as the rent had been reduced. A preliminary decree was accordingly passed by the trial Court for redemption of the property and for actual possession thereof on payment of Rs. 1600 to defendant No. 1, thereby directing the ejectment of the defendants-appellants as well. Defendants Nos. 2 to 4 preferred an appeal which was decided by the Additional District Judge, Ambala, by his judgment dated the 27th May, 1966. The Additional District Judge concurred with the findings of the trial Court and dismissed the appeal. It was argued before him that the appellants who were tenants could be ejected only under the provisions of the East Punjab Urban Rent Restriction Act, 1949, but he repelled this contention relying on a Division Bench judgment of this Court reported as *Messrs, Rashtaria Bartan Bhandar v. Hari Kishan Karera* 1966 Cur. L.J. 395, and dismissed the appeal. Hence the present regular second appeal.

5. The main contention raised by Shri S. P. Goyal, Learned Counsel for the appellants, is that in the instant case the defendants appellants have not been initiated as tenants into the property in dispute by the mortgagee but they were in fact continuing in occupation of the same as tenants before the year 1955 when mortgage was executed and that the mere fact that fresh rent notes were executed in favour of the mortgagee or that the rent was reduced by the latter does not amount to initiating the tenants into the property. These rent-notes, according to the Learned Counsel, were more in the nature of attornment and the defendants could only be ejected in accordance with the provisions of the East Punjab Urban Rent Restriction Act, 1949. It was further submitted that the Division Bench Judgment did not apply to the circumstances of this case and that if it intended to lay down such a proposition as suggested by the lower appellate Court the law laid down therein needs to be reconsidered. Mr. B.S. Bindra, Learned Counsel for the plaintiff-respondent, repeated the arguments of the lower appellate Court and contended that the fresh-rent notes executed with a reduced rate of rent amounted to fresh leases in favour of the mortgagee and that the possession of the tenants could not endure after the mortgage had been redeemed. After hearing the Learned Counsel for the parties at great length and examining the various precedents cited by them, I am of the view that this appeal must succeed.

6. The sole question that arises for determination in the circumstances of this case is whether the defendants appellants can be said to have been inducted into the premises by Rameshwar Dass defendant mortgagee. The Court of first appeal relied mainly on *Messrs Rashtaria Bartan Bhandar's* case without appreciating that the facts of that case were entirely different. There can be no manner of doubt that in that case it was the mortgagee who had let out portions of the mortgaged property on different rents for the first time to "H", "P" and "G" and got rent-deeds executed from them. The learned Judges in a very elaborate judgment discussed the scope of section 76 of the Transfer of Property Act and enunciated exceptions to the general rule that a mortgagee who has a limited interest cannot confer on another a title better than he himself has and induct tenants whose tenancy could endure beyond the period of the mortgage. The

right of a mortgagee to give lease even beyond that period is also recognised but in certain specified circumstances only, since normally leases granted by a mortgagee which are to last after the period of the mortgage, would prima facie be imprudent. A reference was made in the case to an earlier Division Bench judgment of this Court in Regular First Appeal No. 6 of 1961 Bishan Singh v. Kartar Singh R.F.A. 6 of 1961 decided on 12th May, 1965, where the tenants of the mortgagee were not allowed to take advantage of the protection afforded by section 13 of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act. III of 1949). The facts of this case were also different. In Messrs Rashtaria Bartan Bhandar's case, there is a reference to another case decided by Grover and Dua JJ reported as Gian Singh v. Mohan Lal 1964 Cur. L.J. (P&H.) 192. The ratio in the latter case was that a tenant, who had already been on the premises as a tenant of the mortgagor and continued to pay rent to the mortgagee, could not be dispossessed in execution of the decree for redemption unless it could be shown that the mortgagee had changed the terms of the tenancy under a fresh agreement of lease which was imprudent or was shown to be not bona fide. The obvious implication was that in the absence of want of bona fides or any imprudence in the fresh lease-deed, the tenant could not be ejected, even though the lease was to endure after the mortgage had been redeemed. The Additional District Judge has, in the present case, been influenced by the fresh rent-notes executed by the defendants appellants by virtue of which the respective rents were reduced by a few rupees and has treated the execution of such rent notes not as an adornment but as a new lease by which the earlier tenancy in favour of the mortgagor stood terminated.

7. Section 111 of the Transfer of Property Act states the circumstances in which a lease may be determined and the relevant provision therein, which can be pressed into service by the plaintiffs respondents, is that contained in clause (f) which is as follows :-

III. A lease of immovable property determines-

* * *

(f) by implied surrender;

* * *

A mere reduction in rent cannot by itself amount to surrender of the old lease and creation of a fresh one in favour of the mortgagee. No inference of surrender can be drawn if the tenant in recognition of the transfer of an interest in the demised property by the mortgagor in favour of the mortgagee executes a fresh rent note in favour of the latter and may be at a reduced rent. By executing a fresh rent note in favour of the mortgagee, a tenant does not normally get a new interest in the property surrendering his rights existing hitherto including protection from ejectment as given by the East Punjab Urban Rent Restriction Act, 1949, when he was holding as a tenant under the mortgagor. All that is intended is that he attorns to the mortgagee and the execution of a fresh rent

note in such circumstances, in the absence of any conditions showing an intention to the contrary, is only an attornment in favour of the mortgagee. A judgment of the Court of Appeal in England, reported as *Montague v. Borwning* (1954) 2 All. I.R. 601, has been relied upon by the Learned Counsel for the appellants to support the contention that a reduction in rent does not amount to creating a new relationship of landlord and tenant, but it is not of much assistance to him. In that case, the premises, whose rental value was ₹ 66 a year, were let out to a tenant. The tenant and his wife had to render services as a caretakers worth whereof was ₹ 40 a year and the tenant had to pay the balance of ₹ 26. Later, the landlords realised that much more work had to be done by the tenant as a caretaker and they, therefore increased his (tenant's) wages by ₹ 26 a year, whereby the amount of rent and the wages due were equated leaving no balance to be paid by the tenant. It cannot be said in such a case that there was any increase or reduction in rent when only the value of the services rendered by the tenant had been raised.

8. Mr. Balbir Singh Bindra, Learned Counsel for the plaintiffs respondents, has referred to two judgments of the Lahore High Court reported as AIR 1929 291 (Lahore) and *Mohammad Din v. Srada* AIR 1934 Lah. 743 (1). In both these cases the question before the Court was as to whether the documents required compulsory registration in view of the provisions of section 17 of the Registration Act. There were changes effected in the terms and conditions of the documents creating lease and it was in these circumstances that the High Court held that the documents created a fresh lease and required registration.

9. The facts of the instant case are more or less similar to those in Civil Revision No. 382 of 1961 *Mam Raj v. Basheshar Parshad* C.R. 332 of 1961 decided on 2nd March, 1962, where Mehar Singh, J. (as my Lord the Chief Justice then was) held that in such circumstances the execution of a fresh rent-note by a tenant was more in the nature of an attornment. I am in respectful agreement with the observations made by my Lord in that case and must hold that the execution of a fresh rent-note by the defendants appellants in favour of the mortgagees when they were already in possession of the property as tenants under the mortgagors did not amount to the creation of a fresh lease by the tenants defendants appellants in favour of the mortgagees thereby giving a right to the plaintiffs respondents (mortgagors) to eject them when the property was got redeemed. The defendants appellants having held the property as tenants under the mortgagors are entitled to continue to enjoy the protection against eviction given by the East Punjab Urban Rent Restriction Act, 1949, and cannot be deprived of that simply because they executed fresh rent-notes at reduced rents in favour of the mortgagees plaintiffs respondents.

10. The appeal is accordingly allowed and the suit of the plaintiffs respondents dismissed with costs.