
(1980) 09 MP CK 0016

In the Madhya Pradesh High Court

Case No : Second Appeal No. 206 of 1979

Ramprasad Maddulal Vaishya

APPELLANT

Vs

Badrilal Pannalal and another

RESPONDENT

Date of Decision : 02-09-1980

Acts Referred:

Transfer of Property Act, 1882 — Section 111(c), 76(a)

Citation : (1980) JLJ 809 : (1980) MPLJ 132

Hon'ble Judges : R.C. Shrivastava, J

Bench : Single Bench

Advocate : R.D. Jain, for the Appellant; J.P. Shrivastava and A.K Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Shrivastava, J.

This second appeal was admitted for hearing only on the following substantial question of law--

Can, in a suit for redemption of an anomalous mortgage as here, the tenant inducted by the mortgagee on the mortgaged property of which he held vacant possession under the terms of the mortgage, be legally made to deliver vacant possession of the mortgaged property to the mortgagor on redemption of the mortgage?

The facts are as follows. By a registered deed dated 20-5-1960, the respondent No. 1 Badrilal mortgaged with possession certain premises, described as shop, situated at Sheopur Kalan, with the respondent No. 2 Mathuralal for a consideration of Rs. 5,000. The terms of the mortgage provided that the mortgagor would be entitled to get back possession of the shop on redemption. It was an anomalous mortgage. Afterwards, the mortgagee let out the shop to the appellant Ramprasad on monthly rent of Rs. 70 and placed him in possession thereof. Thereafter, the mortgagor, i. e. the respondent No. 1 instituted the suit,

out of which this second appeal has arisen, against the mortgagee, i. e. the respondent No. 2 Mathuralal and the tenant Ramprasad, i. e. the appellant, for redemption of the mortgage claiming possession of the shop from both of them on redemption. The respondent No. 2 Mathuralal, who was defendant No. 1 in the suit contended that it was not possible for him to get the shop vacated by the appellant (defendant No. 2) although he (respondent No. 2) was prepared to give possession and that the plaintiff, i. e. the respondent No. 1 was at liberty to obtain possession thereof from the tenant, i. e. the appellant. The appellant (defendant No. 2) contended that, on redemption of the mortgage, he would become tenant of the plaintiff (respondent No. 1), and, therefore, his possession would be protected by provisions of the M. P. Accommodation Control Act, 1961. The trial Court negated the appellant's contention and passed a preliminary decree for redemption, directing both the defendants to put the plaintiff in possession of the shop on redemption. First appeal, preferred by the defendant No. 2 Ramprasad, the tenant, against that decree, was dismissed by the Additional District Judge, Sheopur-Kalan. Being aggrieved, he filed this second appeal.

Under section 111 (c) of the Transfer of Property Act, a lease of immovable property determines, where the interest of the lessor in the property terminates on, or his power to dispose of the same extends to the happening of any event--by the happening of such event. u/s 76 (a), where, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he must manage the property as a person of ordinary prudence would manage it if it were his own.

It is well settled that, by redemption of the mortgage, the mortgagee's interest in the mortgaged property comes to an end, on such determination of his interest therein, in case of mortgage with possession, lease of the mortgaged property granted by him without the express authority or acquiescence of the mortgagor is automatically determined with it u/s 111 (c) *ibid*. No further proceedings are required to be taken by the mortgagor to determine the lease under the Accommodation Control Act. The act of giving the mortgaged house on lease in areas where restrictions on ejection of tenants have been imposed by special legislation such as the Accommodation Control Act cannot be regarded as that of a prudent owner for the management of the property within the meaning of section 76 (a) *ibid*. On redemption of the mortgage, the mortgagor becomes entitled to get back possession of the house and the tenant inducted by the mortgagee must also quit.

The learned counsel for the appellant has not been able to cite any authority favourable to the appellant. That is to say, he has failed to show that the appellant is not liable to be ejected on redemption of the mortgage. On the other hand, the learned counsel for the mortgagor, i. e., the respondent No. 1 has placed reliance on the following decisions in support of his contention that, on redemption of the mortgage, the appellant must also quit the premises.

(i) Aladadkhan Kalukhan v. Kazi Nasruddin 1961 MPLJ 924 : 1961 JLJ 1094 (ii) Asa Ram and Another Vs. Mst. Ram Kali and Another, , (III) Purshottam Vs. Ramcharanlal and Others, , (iv) Sachalmal Parasram Vs. Ratnabai and Others, .

The learned counsel for the mortgagee, i. e., the respondent No. 2 has supported the contention of the learned counsel for the mortgagor i. e. the respondent No. 1.

In the case of Aladadkhan (supra), it was held by a single Bench of this Court that, if by redemption of the mortgage of a house, the mortgagee's interest in the mortgaged property is determined, any lease granted by him of the mortgaged house without the express authority or acquiescence of the mortgagor is automatically determined with it u/s 111 (c) of the Transfer of property Act, that no further proceedings are required to be taken by the mortgagor under the Accommodation Control Act to determine the tenancy, that act of the mortgagee which puts the mortgagor's right of possession in peril cannot be regarded as that of a prudent owner for the management of the property within the meaning of section 76 (a) of the Act. In the case of Asaram (supra), their Lordships observed that law undoubtedly is that no person can transfer a title better than what he possesses, that any transfer of the mortgaged property by the mortgagee must cease when the mortgage is redeemed and that the person who claims benefit of section 76 (a) of the Act, which is in the nature of an exception to section 111 (c) must strictly establish it. In the case of Purshottam (supra), a Division Bench of this Court held that a tenant of the mortgagor in possession cannot resist eviction by the mortgagee on redemption of the mortgaged property by relying upon the M. P. Accommodation Control Act. In the case of M/s Sachalmal Parasram (supra) the following passage from an earlier decision All India Film Corporation Ltd. v. Raja Gyannath AIR 1969 NSC 185 of the same Court was quoted by their Lordships with approval:

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. This the mortgagor or the person succeeding to the mortgagor's interest may elect to do. But if he does not, the lessee cannot claim any rights beyond the term of his original lessor's interest.

Referring to section 76 (a) of the Act, the following passage from the same earlier decision was also quoted by their Lordships with approval.

From this (provision) it is inferred 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. This principle applies ordinarily to the management of agricultural lands and has seldom been extended to urban property so as to tie it up in the hands of lessees or to confer on them rights under special statutes...

In that earlier decision, the Court had examined the question whether the tenants could take advantage of the provisions of the East Punjab Urban Rent

Restriction Act, 1949. The question was answered in the following words, which were reproduced by their Lordships in the case of M/s. Sachalmal Parasram (Supra).

The respondents attempted to argue that the Rent Restriction Act defines landlord and tenant with reference to the payment of rent. A landlord means a person entitled to receive rent and a tenant means any person by whom or on whose account rent is payable. These definitions apply if the tenancy, either real or statutory, could be said to survive after the termination of the mortgagee.... The termination of the mortgagee's interest terminated the relationship of landlord and tenant and it could not, in the circumstances, be said to run with the land. There being no landlord and no tenant, the provisions of the Rent Restriction Act could not apply any further.

Thus, it is clear that--

(i) Section 76 (a) of the Transfer of Property Act is in the nature of an exception to section 111 (c) thereof.

(ii) u/s 111 (c) of the Transfer of Property Act, the mortgagee's interest in the mortgaged property determines on redemption of the mortgage.

(iii) On redemption of the mortgage, lease of the mortgaged property granted by the mortgagee comes to an end and the mortgagee's tenant is also bound to deliver possession of the property to the mortgagor, the mortgagor being not required to take further proceedings to determine the tenancy, unless the tenancy was granted by the mortgagee with the concurrence of the mortgagor or unless the relationship of landlord and tenant was agreed to by the mortgagor or a fresh relationship was recreated.

and

(iv) the mortgagee's act of granting lease of the mortgaged accommodation situated in areas in which accommodation control legislation such as the M. P. Accommodation Control Act, 1961 is in force cannot be considered to be a prudent act within the meaning of section 76 (a) of the Transfer of Property Act.

It was not the case of the appellant that the lease in question was granted by the mortgagee with the concurrence of the mortgagor or that the relationship of landlord and tenant was agreed to by the mortgagor or a fresh relationship was recreated between him and the mortgagor. He is, therefore, legally bound to deliver vacant possession of the mortgaged property in question to the mortgagor on redemption of the mortgage. The fact that the mortgage in question was an anomalous one does not make any difference.

In the suit, an application was filed on behalf of the appellant on 6-12-1977 for amendment of his written statement. That application was only partly allowed by the trial Court on 17-7-1978. In paragraph No. 2 of his written statement, the appellant wanted to add the following pleading after the words

That portion of the proposed amendment was not permitted to be effected. The question was agitated by the appellant in the lower appellate Court but that Court held that that portion of the amendment was rightly refused by the trial Court. The learned counsel for the appellant has urged that the said amendment was illegally refused and the same should now be allowed to be carried out. The appeal was not admitted on this question. It was admitted only on the question mentioned in the first paragraph above and, at the time of its admission, as clearly stated in the ordersheet dated 17-10-1979, it was conceded by the learned counsel for the appellant that no other substantial question of law was involved for decision in the appeal. Therefore, although under the proviso to section 100 (5) of the Code of Civil Procedure, it is open to this Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated, if satisfied that the case involves such a question, it is improper to allow the appellant's counsel to raise the above question. Hence, he has not been permitted to raise it.

Even if the abovesaid question is allowed to be raised, the contention of the learned counsel for the appellant has no force as I shall presently show. Paragraph No. 2 of the plaint reads as follows:

Reply of the appellant thereto is to be found in paragraph No. 2 of his written-statement, which paragraph reads as follows:

foot in steps representatively contract of tenancy

Thus, it was an undisputed position that there was no privity of contract between the appellant and the mortgagor and that the lease was granted by none else except the mortgagee. The appellant claimed to become tenant of the mortgagor only by operation of law on redemption. There was no foundation at all for the plea which the appellant wanted to raise by the abovesaid amendment. Then, the amendment was applied for after the lapse of more than a year from the date of presentation of the plaint and only a day before the date (7-12-1977) to which the suit was posted for delivery of judgment, without assigning any reason for the delay. The trial Court disallowed the amendment holding that it was mala fide and the trial Court's view was affirmed by the lower appellate Court. I see no reason to differ from the view taken by both the lower Courts in the circumstances of the case. That apart, an amendment whereby the defendant seeks to change the defence completely and substitute an entirely different and new case and displace the plaintiff completely from the admission made in the written statement cannot be allowed for the reason the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendant, as pointed out by their Lordships of the Supreme Court in the case of *Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Latha Ram and Co.*, . Thus, the amendment was rightly refused.

In the result, the appeal fails and is dismissed with costs. The appellant shall pay the respondents' costs. Counsel's fee shall be up to Rs. 300 only, if pre-certified.