

(1953) 05 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 40 of 1953

Sucha Singh and Others

APPELLANT

Vs

Nighaya Ram
 Nighaya Ram Vs Sucha Singh and Others

RESPONDENT

Date of Decision : 29-05-1953

Acts Referred:

Punjab Tenancy Act, 1887 — Section 53(6)
Transfer of Property Act, 1882 — Section 60

Citation : AIR 1954 P&H 86

Hon'ble Judges : Kapur, J

Bench : Single Bench

Advocate : Rajindra Nath Aggarwal and D.W. Aggarwal, for the Appellant; Tek Chand, for the Respondent

Final Decision : Dismissed

Judgement

Kapur, J.—This is a defendants' appeal against an appellate decree passed by Mr. Jagdish Narain Kapur, Additional District Judge, Ambala, dated the 21th of December, 1952, confirming the decree of the trial Court.

2. The facts of the case which have given rise to the appeal are that on the 8th of June, 1915, Nighaya and his brother mortgaged occupancy rights of certain land to the predecessors of Sucha Singh and others for a sum of Rs. 1000/-. In 1928 the occupancy tenants applied that they wanted to sell their occupancy rights. An order was made u/s 53 of the Punjab Tenancy Act on the 15th of May, 1930, allowing the occupancy tenants to sell 11 bighas 19 biswas to Sucha Singh for a sum of Rs. 675/- out of which Rs. 375/- were to be paid within three weeks and Rs. 300/- were to go towards the payment of the mortgage. I am informed that Rs. 375/- were paid within the time allowed in the order. An appeal was taken against this order by the occupancy tenants which was allowed on the 7th of August, 1930, to this extent that the value was varied from Rs. 150/- per bigha to Rs. 160/- per bigha. This additional sum of money, it appears, was

never paid. On the 19th of January, 1931, a mutation of sale was sanctioned when both the occupancy tenants as well as the mortgagees were present. At that time the occupancy tenants stated that they will file a suit to enforce their right ("lekan ham dawa diwani karenghe"). In 1932 a suit was brought by the occupancy tenants claiming that they were entitled to fifteen-anna share. But this suit was dismissed.

3. On the 20th July, 1942, a suit for redemption of 28 bighas was brought which was decreed. On the 11th of January, 1950, Nighaya brought a suit for redemption of the balance, that is, 11 "bighas" 19 "biswas". The defence was that the mortgagee rights had been extinguished because of the purchase u/s 53 of the Punjab Tenancy Act and that even if there was no valid sale the right of the mortgagees had ripened into ownership because of their having been in adverse possession for the statutory period of twelve years. The learned Additional District Judge in appeal held that the mortgage was still subsisting and it had not been turned into a sale and that no question of adverse possession arose because the possession of the defendants was not as owners. The defendants have come up in second appeal to this Court.

4. u/s 53 (5) of the Punjab Tenancy Act when the landlord pays up the price as fixed by the Revenue Officer within the time prescribed in the order he shall be deemed to have purchased the right, and under Sub-section (6) of Section 53 when the value is so paid, the right of occupancy becomes extinct and the Revenue Officer has to put the landlord in possession on an application being made in that behalf by the landlord, and if the right of occupancy is already under mortgage to the landlord the tenancy passes to landlord unencumbered by the mortgage.

5. The question to be decided in the present case is whether the occupancy rights had become extinct in the present case. No doubt, the landlord did pay Rs. 375/- which were ordered to be paid within three weeks, but this was subject to any order which the appellate Court might pass, and in the present case the appellate Court had passed an order increasing the value of the rights of the mortgagors and as that money had never been paid the operation of Sub-section (6) of Section 53 never became operative. Therefore there was no extinction of the rights.

6. It is next submitted on behalf of the appellant that as a mutation was entered in the presence of both the parties in regard to the proprietary rights, the possession of the mortgagee became adverse from that date. This entry was not the result of acquiescence on the part of the occupancy tenant. He did state at that time that he would bring a suit and he actually brought a suit which was misconceived. But the fact remains that mutation should represent true facts and not what the Revenue Officer thinks are true facts. In the present case the value of the occupancy rights as determined by the Revenue Officer in appeal had not been paid and therefore the occupancy rights never became extinct and the mere fact of there being a mutation would not be sufficient. The landlord still

remains a mortgagee and there was no hostile title asserted as against the mortgagor. In -- Ram Ganesh Rai Vs. B. Rup Narain Rai and Others, it was held that a mere mutation entry of the mortgagee as a proprietor clearly cannot convert his possession as mortgagee into adverse possession, and the Lahore High Court in -- "Godar v. Nizam Din" 120 Ind Cas 789 (B), held that a mortgagee in possession cannot by getting himself recorded in the revenue papers as owner defeat the right of the mortgagor to redeem. Mr. Rajinder Nath who has appeared for the appellant has very strenuously argued that the nature of the entry having been charged is sufficient manifestation of the intention of the appellant to hold the land as owner and not as mere mortgagee. For that he has relied on mutation which in my opinion is not sufficient to change the nature of possession from that of a mortgagee to that of an owner. In my judgment the learned District Judge has rightly held that no case of adverse possession had been made out.

7. I would therefore dismiss this appeal, but considering that the case was not free from doubt on question of law, I would leave the parties to bear their own costs in this Court and in the Courts below.