

(1996) 01 MAD CK 0095
In the Madras High Court
Case No : C.R.P. No. 569 of 1990

T.K. Subramania Iyer (Died) and others	APPELLANT
Vs	
C. Natarajan and others	RESPONDENT

Date of Decision : 24-01-1996

Acts Referred:

Transfer of Property Act, 1882 — Section 111, 60, 76

Citation : AIR 1996 Mad 241 : (1996) 1 MLJ 453

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Mrs. Chitra Sampath, for the Appellant; A.L. Somayaji and A.S. Vijayaraghavan, for the Respondent

Judgement

1. Originally the revision was filed by the landlords in R.C.O.P. No. 7 of 1985, viz., petitioners 1 and 2 herein. Pending disposal of the revision, first petitioner died and his legal representatives, namely, petitioners 3 to 5 have been brought on record as per Order in CM.P. No. 84 of 1996 dated 19-1-1996. The said R.C.O.P. was filed before the Rent Controller, Udumalpet.

2. The material averments in the eviction petition are as follows :--

The schedule building originally belonged to one Srinivasa Iyeugar and Janaki Ammal, who executed a possessory mortgage in favour of one Jagannatha Iyengar. That was dated 12-10-1949. The mortgagee came into possession. On 11-1-1968, the mortgagee inducted Chinnappa Gounder as a tenant of the building. He is the predecessor of respondents 1 and 2 in this case. He was doing business along with one Kuttappan who lived in the back portion of the schedule premises. He is dead and the third respondent is claiming as his legal heir.

3. It is seen that the original owner Srinivasa Iyengar and Janaki Ammal executed an agreement for sale in favour of the original revision-petitioners herein. Since sale deed was not executed as per the agreement, they instituted a suit as O.S. No. 96 of 1950, on the file of the District Munsif's Court, Udumalpet.

A decree was obtained and in execution the original petitioners herein got a sale deed executed through Court. That was on 16-12-1954. Thus the original petitioners became the owners of the property. The mortgagee Jagannatha Iyengar executed a release deed on 22-9-1984, as evidenced by Ex. A-3, and on the same date, instead of handing over possession of the property, he executed Ex.A-4, i.e., he authorised the original petitioners to "recover all arrears of rent from his tenant and also to collect future rent from the building. Thereafter, the original petitioners issued a notice to the respondents on 25-1-1985. In that notice, a copy of which is marked as Ex.A-5, it is stated that respondents 1 and 2 herein are the tenants of the building and the third respondent is sub-lessee, that they have committed default in paying the rent both to original" mortgagee and after release, to the petitioners herein, and they also wanted the building to be surrendered, for their own occupation. It is not disputed that the notice was accepted by the respondents, and finally when the demand was not complied with, on 16-4-1985, the present eviction petition was filed.

4. In the counter statement, it was contended by respondents 1 and 2 stating that between the petitioners and themselves, there is no landlord and tenant relationship. They also said that even though the petitioners herein became the owners of the property on 11-12-1954, since they did not take any steps to redeem the mortgage, they contacted the mortgagee Jagannatha Iyengar, who according to them, had then become the owner of the property in view of lapse of time, and they wanted a sale deed to be executed in their favour. It is said that they paid an amount of Rs. 10,000/- to Jagannatha Iyengar. It was said that within one year, the document will have to be executed in their favour. They also put forward a contention that it was the practice of the mortgagee to collect the rent from them directly and in view of the close relationship, they did not insist on receipt. They also disputed the claim of default in paying the rent and also the petitioners' claim on the ground of bona fide requirement for own occupation.

5. On the side of the petitioners, Exs. A-1 to A-10 were marked and the first petitioner was examined as PW 1. On the side of the respondents, we have only the oral evidence of RW 1, who is the first respondent herein. After taking evidence, the Rent Controller allowed the petition. It found all the issues in favour of the petitioners.

6. Against the said decision, respondents 1 to 3 filed R.C. A. No. 9 of 1988, on the file of Appellate Authority (Subordinate Judge), Udumalpet. The Appellate Authority came to the conclusion that since the respondents herein were inducted by the mortgagee, once the mortgage is redeemed, the landlord and tenant relationship has come to an end, and the original petitioners cannot claim to be the -landlords. For the said purpose, the Appellate Authority relied on the decision reported in S.V. Venkatarama Reddiar Vs. Abdul Ghani Rowther and Others, . Once the Appellate Authority held that the petitioners are not the landlords and there was no relationship of landlord and tenant between the parties, the other question was also found in favour of the respondents herein.

The appeal was allowed, and the eviction petition was dismissed. It is against the said decision of the Appellate Authority, the original petitioners filed this civil revision petition.

7. It is seen that the late second petitioner has settled his entire right over the property in favour of the first petitioner long before the institution of the proceedings, and, on 13-12-1995, the first petitioner also died. Petitioners 3 to 5 herein have been impleaded as additional petitioners as per order in C.M.P. No. 84 of 1996.

8. The main question to be considered in this case is, whether the petitioners herein can be treated as landlords, and whether they are entitled to maintain this petition. If it is found that they are landlords under law, eviction can only be ordered, for, it is admitted that the respondents have not paid the rent. If the question of denial of title is found to be not bona fide, then on that ground also, the eviction could be ordered.

9. So, the only question to be considered is, whether the petitioners are landlords under law.

10. Naturally that question depends upon the fact whether the predecessors of the additional revision-petitioners come within the definition of "landlords" under the Rent Control Act, i.e., whether they are entitled to collect rents from the respondents 1 and 2 herein. In the narration of facts, I have already slated that Chinnappa Gounder was inducted into the premises by the mortgagee Jagannatha Iyengar and the right of Jagannatha Iyengar was under a possessory mortgage, dated 27-4-1949. Being a possessory-mortgage, at the time of redemption, the mortgagee is also bound to deliver possession of the property to the mortgagor, because, that alone will complete the act of redemption. The fact that the original petitioners obtained right of Srinivasa Iyengar and Janaki Animal is not disputed on the basis of the decree in O.S. 96 of 1950, which, I have already said, is a decree for specific performance.

11. Section 60 of the Transfer of Property Act deals with redemption. Section 76 of the Act deals with liabilities of the mortgagee in possession and S. 111 of the Act says about the modes of determination of lease. Section 111(c) says that 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 only to, the happening of any event-by the happening of such event. Along with the same, the Rent Control Act provides the definition for the words "landlord" and "tenant".

12. The mortgagee Jagannatha Iyengar's interest lasts only so long as the mortgagee is not paid off and on redemption of the mortgage, the mortgage comes to an end. The derivative title from him must ordinarily come to an end with the termination of mortgagee's title. It is the law that the mortgagee by creating a tenancy becomes a lessor of the property, but his interest as lessor is conterminous with his mortgage interest. The relationship of lessor and lessee

cannot, therefore, subsist beyond the mortgagee's interest unless the relationship is agreed to by the mortgagor or the person succeeding to the mortgagor's interest may elect to do so. This is the law declared under Sec. 111(c) of the Transfer of Property Act.

13. Under S. 76 of the Transfer of Property Act, it is said that the mortgagee must manage the property as a person of ordinary prudence would manage it as if it were his own. From this, 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.

14. As already stated, S. 60 of the Transfer of Property Act, deals with the right of the mortgagor to redeem. It is stated that the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage money, to require the mortgagee : (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished. So, S. 60 of the said Act presupposes three acts by the mortgagee while the mortgagor exercises the redemption, namely, (1) to hand over the title deeds, (2) to deliver possession of the property, and (3) to execute a release deed of his right. These three acts of the mortgagee amount to an extinguishment of his right and redemption is complete on completion of the above acts.

15. In this case, admittedly, the mortgagee obtained physical possession. But thereafter he inducted the tenants, and he was not in a position to hand over physical possession of the property mortgaged. Instead of handing over delivery of the property, which he was bound to do, the mortgagee executed a document in favour of the original petitioners herein on 22-9-1984, simultaneously along with Ex.A-3 extinguishing his right as a mortgagee. In that document (Ex.A-4), the mortgagee says that he received the mortgage money, but the properties are in the hands of building tenants. As per Ex.A-1 he authorised the original petitioners herein to realise the entire arrears of rent which are due to him and also to collect the future rent from the tenants directly. He also authorised them to deal with the tenants directly or get eviction through Court. Even though the document Ex.A-4 is dated 22-9-1984, suit notice was issued only on 25-1-1985. That is Ex.A-5. In Ex.A-5, the original petitioners herein seek surrender of possession of the building from respondents herein on the ground that the building is required for their own occupation and they also want all arrears of rent which were due to the mortgagee and also to themselves after the release to be paid to them. The respondents were given time till 15-2-1985 for the said purpose. It also says that the rental arrangement is terminated by virtue of this

notice. Ex.A-5 was not replied by the respondents and they remained silent. Thereafter, on 16-4-1985, the present petition was filed stating that the tenants have committed default in paying the rent from 17-3-1978 onwards, and, as on the date of petition, more than eight years" rent was due. The period of eight years is arrived at by calculating the default committed while the property was in the hands of the mortgagee and also the period after the release up to the date of petition. The legal impact of Ex.A-5 notice whereby the petitioners have terminated the rental arrangement and demanded rent till that time and further statement in the eviction petition that the tenants have committed default in paying rent are of some importance when we consider the question whether there is landlord and tenant relationship after redemption.

16. In *The All India Film Corporation Ltd., and Others Vs. Sri Raja Gyan Nath and Others*, , their Lordships considered a similar question. The subject-matter in that proceeding was a cinema theatre situate in Jullundur City. In paragraph 7 of the judgment, their Lordships held thus :--

"The first question to consider is this : Did the tenancy created by the mortgagee in possession survive the termination of the mortgagee interest so as to be binding on the purchaser. A general proposition of law is that no person can confer on another a better title than he himself has. A mortgage is a transfer of an interest in specific immovable property for the purpose of securing repayment of a loan. A mortgagee's interest lasts only as long as the mortgage has not been paid off. Therefore, on redemption of the mortgage the title of the mortgagee comes to an end. A derivative title from him must ordinarily come to an end with the termination of the mortgagee's title. The mortgagee by creating a tenancy becomes the lessor of the property but his interest as lessor is conterminous with his mortgagee interest. Section 111(c) of the Transfer of Property Act provides that 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 only to the happening of any event -- by the happening of such event. The duration of the mortgagee's interest determines his position as the lessor. 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. These propositions are well understood and find support in two rulings of this Court in *Mahabir Gope v. Harbans Narain Singh* and *Asaram v. Mst. Ram Kali*.

To the above propositions there is, however, one exception. That flows from S. 76(a) which lays down liabilities of a mortgagee in possession. It is provided there that when 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. From this 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. To this again there is an exception. The lease will continue to bind the mortgagor or persons deriving interest from him if the mortgagor had concurred to grant it."

17. The above decision was followed by the Supreme Court in *Sachalmal Parasram Vs. Ratnabai and Others*, . After accepting the proposition laid down in the earlier case, their Lordships held that the act of the mortgagee was not a prudent act and, therefore, the person in occupation is not entitled to the benefits of Rent Control Act. We may note that in that case the question whether the mortgagor has agreed with the mortgagee to have a lease executed beyond the term of the mortgage did not arise for consideration. But their Lordships accepted the principle that the relationship of lessor and lessee can be continued if the mortgagor or the person succeeding to the mortgagor's interest may elect to do so. The said decision was rendered in respect of a building lease coming under the East Punjab Urban Rent Restriction Act, 1949.

18. In *Jadavji Purshottam Vs. Dhami Navnitbhai Amaratlal and Others*, , their Lordships held that a tenancy created by a mortgagee in possession may be binding even after the termination of the title of the mortgagee in possession if the mortgagor had concurred to the grant of the lease. In paragraph 13 of the said judgment, (at page 236) their Lordships held that the concurrence pleaded by the tenant is not proved and, therefore, the occupant is not entitled to the benefits of the Rent Control Act and, therefore, the mortgagor cannot be termed as "tenant" of the landlord. In that case, an argument was taken that there was a deviation from the decision reported in (1960) 3 SCC 79 (*supra*) and also the decisions of various High Courts, including the one reported in *S.V. Venkatarama Reddiar Vs. Abdul Ghani Rowther and Others*, .

19. (*Om Prakash Garg v. Ganga Sahai*) is again a case by a tenant claiming right under the Rajasthan Rent Control Act. The tenant was originally inducted by the mortgagee. In that case, the conclusion was that the induction of the tenant was not an act of prudent management by the mortgagee. Further, the creation of tenancy was in contravention of S. 64 of the Code of Civil Procedure, and thus voidable at the instance of the decree-holder. In that case, the property was attached before judgment and it was ignoring the attachment, the lease deed was executed. In that case also, the question whether the mortgagor has concurred with the mortgagee granting lease beyond redemption or whether he has approved the act of mortgagee did not arise for consideration.

20. *Hanumant Kumar Talesara Vs. Mohan Lal*, , is also a case under the Rajasthan Rent Control Act where the occupant claimed the benefits of the Rent Control Act against the mortgagor. The mortgagor repudiated the lease, and their Lordships of the Division Bench held that the creation of lease was not a prudent act of the mortgagee and will not bind the mortgagor as he has repudiated the

lease. In that view of the matter, their Lordships negated the contention of the occupant, denying his right to claim benefits under the Rent Control Act.

21. In view of the deviation in the decisions, an argument was taken before the Supreme Court that the entire case-law requires reconsideration by that Court. The said argument was not countenanced on the ground that the question of prudent management by the mortgagee even if it applies to urban property, the factual findings are that the mortgagee has not agreed for granting of a mortgage beyond the term. One thing that is clear from the said decision is that if the mortgagor concurs with the mortgagee or if the mortgagors instead of taking physical possession of the property, concurs with the mortgagee to attorn with the tenant or deal with him directly, the lease created by the mortgagee will be binding on the mortgagors.

21A. In *Pomal Kanji Govindji and Others Vs. Vrajlal Karsandas Purohit and Others*, in paragraph 41 (at page 484), their Lordships again confirmed the decision reported in *The All India Film Corporation Ltd., and Others Vs. Sri Raja Gyan Nath and Others*, , and, on the facts of the case, their Lordships gave importance to the undertaking by the mortgagee, to re-deliver possession of the property to the mortgagor and; therefore, came to the conclusion that the mortgagor has not concurred for the grant of lease beyond the period.

22. In *Carona Shoe Co. Ltd. and Another Vs. K.C. Bhaskaran Nair*, , the question of approval or concurrence was again mooted. In paragraph 12 of the judgment, the said contention was raised, and their Lordships held that there was no approval or concurrence. The relevant portion of the said decision reads thus :--

"Sri Iyer, in our opinion, is wrong in contending that in the instant case the mortgage deed specifically empowered the mortgagee to induct tenant who would continue to be in possession even after the redemption or end of the mortgage. It is true that the mortgage deed recited that the tenants were there. It is also true that the mortgage deed also enjoined that the method of realisation of the rent as the method of having the usufruct of the mortgage by the mortgagee. But it must be understood that so long as the mortgage subsisted, there was relationship of tenant and landlord. It could not be so after the mortgage was redeemed. There is nothing in the mortgage deed in the instant case which warranted the conclusion that the mortgagee could induct tenants who would continue beyond the term of the existence of the mortgage or who would be given rights even after the expiry of the mortgage. Sri Iyer then submitted that this Court in the aforesaid decision had referred to another decision of this Court, namely, *Jadavji Purshottam Vs. Dhami Navnitbhai Amaratlal and Others*, where it was held that if the lease granted to the tenant by the mortgagee had the approval or concurrence of the mortgagor, the same would entitle the tenant to claim tenancy rights even as against the mortgagor after he had redeemed the mortgage, then in such a case, such tenants would continue to be in possession. Sri Iyer drew our attention to the observations of this Court in the aforesaid decision at para 13 of page 236 of the report. With

reference to the term of the mortgage in the instant case and the communications between the parties, Sri Iyer tried to contend that the lease granted in favour of the appellants by the mortgagee had the approval of concurrence of the mortgagor. We are, however, unable to accept or find in the correspondence any such approval or concurrence"

23. In 1994 (2) SCC (Supp) 585 (Des Raj Om Parkash v. Shankar Dass), their Lordships accepted the principle that with the concurrence of the mortgagor, the lease executed by the mortgagee can be made binding on him even after redemption. But, on the facts of that case, their Lordships rejected the contention. Paragraphs 3 and 4 of the judgment can usefully be extracted :--

"The only point for bur consideration is, whether the judgment of the High Court could be upheld. In attacking the findings therein, the learned counsel would seek to rely on two decisions, i.e., The All India Film Corporation Ltd., and Others Vs. Sri Raja Gyan Nath and Others, ; Jadavji Purshottam Vs. Dhami Navnitbhai Amaratlal and Others, . On the basis of those rulings it is urged, where the mortgagor has consented for the continuance of the tenancy of the appellant even after redemption, no eviction is possible at the instance of the mortgagor.

Vet another ruling is cited as Jagan Nath Piare Lal v. Mittar Sain. It was held therein where a tenant of a mortgagor, after the mortgage, necessarily attorns to the mortgagee he becomes a tenant of the mortgagee. In such an event, unless his tenancy has been put to an end to by the mortgagor on the redemption of the mortgage, he again is relegated to his position of a tenant of the mortgagor. This ruling also supports the contention of the appellant."

After narrating the facts, their Lordships held thus :--

"..... Hence, neither The All India Film Corporation Ltd., and Others Vs. Sri Raja Gyan Nath and Others, nor Jadavji Purshottam Vs. Dhami Navnitbhai Amaratlal and Others, will have any application into the facts of this case."

24. In this connection, we may also take note of a passage from Mulla on Transfer of Property Act -- Eighth Edition (1995), at page 636, which reads thus :--

"The tenant, inducted by a mortgagee in possession, cannot claim the benefit of the protection afforded by the Rent Control legislation after the redemption of the mortgage, unless the mortgagor had permitted the mortgagee to induct a tenant even beyond the term of the mortgage or has consented to the creation of the lease or has adopted it."

25. Before discussing further on the relationship of the mortgagor, it is better to consider the position of a tenant under the mortgagee after redemption.

26. In one of the earliest decisions of this Court reported in Chinnappa Thevan and Others Vs. Pazhaniappa Pillai, , their Lordships of the Division Bench said that even after redemption, the tenant continues to be a tenant and he cannot

plead adverse possession against the mortgagor. Regarding the binding nature of the lease created by the mortgagor, their Lordships held that it is for the mortgagor either to agree with it or put an end to it.

27. The above decision came for interpretation by a Full Bench of this Court and the judgment rendered by this Court has been reported in *S.V. Venkatarama Reddiar Vs. Abdul Ghani Rowther and Others*, . Learned counsel for the respondents has relied on the said decision, for the purpose of emphasising that a tenancy created by a mortgagee cannot be binding on the mortgagor and, therefore, eviction through rent control proceedings cannot be had. While discussing the judgment reported in *Chinnappa Thevan and Others Vs. Pazhaniappa Pillai*, , this Court has held thus :--

"Before we sum up our conclusion we can conveniently deal with some of the other contentions raised by the appellant's counsel. On the basis of *Chinnappa Thevan and Others Vs. Pazhaniappa Pillai*, , it was argued that tenancies created by a mortgagee in possession are binding on the mortgagor even after the redemption of the mortgage in so far as the relationship of landlord and tenant continues. Undoubtedly, that was the ratio laid down in that case. But the facts of that case were totally different. The tenant therein set up an extreme contention that since he had been inducted on the land by the mortgagee his possession subsequent to the redemption of the mortgage was hostile in character vis-a-vis the mortgagor and hence he had perfected title by adverse possession. It was in that situation, the Division Bench held that he continued to be a tenant of the land and hence had not perfected title by adverse possession. The decision has been rendered on the footing that on the redemption of the mortgage if was open to the mortgagor to affirm the tenancy created by the mortgagee with possession or call upon the tenant to surrender possession and, as long as such an option had not been exercised, the tenant could not put forth a plea of adverse possession. In the instant case, the appellant does not claim tenancy rights under the mortgagor, nor does he put forward a case of adverse possession. On the other hand, what he contends is that by reason of Statutory intervention his tenancy rights are protected even though his landlord's (mortgagee's) transitory title over the property came to a close with redemption of the mortgage. Hence we fail to see how the ratio in *Chinnappa Thevan and Others Vs. Pazhaniappa Pillai*, , can be invoked by the appellant. If the decision is, however, relied for contending that the mortgagee's act of creating tenancy, even with reference to S. 76(a) will necessarily bind the mortgagor, we must reject that contention, for, it is opposed to the ratio laid down in *Mahabir Gope v. Harbans Narain*."

From a reading of paragraph 23 of the said judgment (extracted above), it is clear that on redemption of the mortgage, it is open to the mortgagor to either affirm the tenancy created by the mortgagee with possession or call upon the tenant to surrender possession. Their Lordships further held that tenancy created by the mortgagee will not necessarily bind the mortgagor, and if such a decision

was taken in the judgment reported in Chinnappa Thevan and Others Vs. Pazhaniappa Pillai, , they cannot accept it.

28. What is the legal statutes of a tenant inducted by a mortgagee who has been redeemed, and before his status as tenant is recognized or repudiated by the mortgagor. As per definition given under the Rent Control Act, a tenant includes a person who continues to be in occupation of a premises whose tenancy has been determined. But the Rent Control Act will have no application unless his status as tenant of the mortgagor is also admitted. His position and possession are both precarious -- in the sense that he is awaiting the demand by the mortgagor either to surrender possession by repudiating his status as a tenant or he awaits the recognition of status as a tenant. Once the mortgagor repudiates and refuses to recognise the action of the mortgagee at that time, he becomes a trespasser, as against the mortgagor. But once his status is recognized and the action of the mortgagee is either approved, concurred or adopted by the mortgagor, a legal relationship of landlord and tenant is created by operation of law. In either case, any action on the part of the tenant is not contemplated under law. Both the repudiation and the recognition came only from the mortgagor, and the results also vary as a consequence of his actions. The tenant is also not expected to attorn the tenancy by any written document in recognition of his status though he has to pay the rent to the person entitled to receive the same. The definition of "landlord" under the Rent Control Act is an answer for the same.

29. In all these decisions cited, the claim was put forward by the occupant who was claiming his right under the mortgagee. In all those cases, the mortgagor did not accept the tenancy and wanted physical possession from the person in possession. In all these cases, the mortgagee was also a party to the proceedings and he wanted the mortgagee to deliver possession which is an act of redemption.

30. In this case, it is the mortgagors who are claiming that they are the landlords coming under the definition of the Rent Control Act, and they want that a benefit under the Act should be given to the tenants. From the various decisions cited above, it is clear that an option is given to the mortgagor either to accept the tenancy created by the mortgagee or repudiate it. In all these decisions, it has been held that if it is an act of prudent management and that too in respect of agricultural lands, the mortgagor is also bound by the same. It has been further held that if it is the case of urban land, even if it is an act of prudent management, the same cannot extend from the period of mortgage or until redemption, unless the mortgagor has also concurred to it. Even if it is not an act of prudent management, the decisions are clear that if the mortgagor has agreed or consented to the act of the mortgagee creating a lease beyond the period of redemption, the same is binding on him (mortgagor).

31. As stated already, learned counsel for the respondents relied on the decision reported in S.V. Venkatarama Reddiar Vs. Abdul Ghani Rowther and Others, .

That is also a case where the tenant in occupation claimed the benefit of the Rent Control Act in a redemption suit, and the main question that came up for consideration was, whether the lease created by the mortgagee was a prudent act of management, and whether the same applies to urban property, and whether the mortgagor can be treated as a landlord under the Rent Control Act. That was not a case of concurrence by the mortgagor, but a case where the mortgagor wanted physical possession of the property from the person in possession, including the mortgagee. In that connection, their Lordships have summarised their findings in paragraph 26 of the said decision 93 MLW 436 (supra) thus :--

"Having dealt with all the contentions of the appellant's counsel, we will now proceed to sum up our findings. Firstly, we hold that the ratio in *Chandrasekhara v. Kunju Van-niar* and *Ponniah v. Perumal* cannot be extended to tenants inducted on non-agricultural urban property by transitory title-holders, like mortgagees with possession, since the abovesaid two cases have been decided purely with reference to the provisions contained in the Tamil Nadu Cultivating Tenants Protection Act. Secondly, under the Tamil Nadu Buildings (Lease and Rent Control) Act, if a tenancy is created by a mortgagee with possession, the ties of landlord and tenant are snapped eo instanti the mortgage is redeemed and, unless there is a fresh forging of the relationship of landlord and tenant between the mortgagor and the erstwhile tenant by (i) the voluntary act of the parties, or (ii) a deemed forging of the relationship by express provision in the Act itself, as u/s 2(aa) of the C.T.P. Act. the erstwhile tenant cannot claim protection under the Act so as to perpetuate his occupation of the building as a tenant. The mere protection given in the Act to tenants from unreasonable eviction will not be of any use, because the protection afforded is intended for tenants against their lands, and not for erstwhile tenants as against the mortgagors who are not their landlords. Thirdly, lease of land for agricultural purposes stands on a distinct footing and hence lease of urban property cannot be placed on the same footing. The resultant position is that the rule of exception contained in Section 76(a) of the Transfer of Property Act cannot be readily and automatically invoked by a tenant let into possession of urban property by a mortgagee with possession. Hence it is, the Supreme Court has held in *The All India Film Corporation Ltd., and Others Vs. Sri Raja Gyan Nath and Others*, and *Sahalmal Parasram v. Ratanbai*, AIR 1972 SCC 37 that the principle of exception afforded by Section 76(a) of the Transfer of Property Act 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. Fourthly, it may be open to a tenant inducted upon urban property by a mortgagee with possession to rely upon Section 76(a) to claim tenancy right for the full term of the tenancy notwithstanding the redemption of the mortgage earlier. But, it is for the person who claims such benefits to strictly establish the binding nature of the tenancy, created by the mortgagee, on the mortgagor."

32. In this connection, it is also worthwhile to note a decision of this Court reported in *R. Sumudra Vijayam Chettiar Vs. Srinivasa Alwar and Others*, . That is a case where a mortgage suit was filed by the mortgagor while the property was in the possession of the tenant. The tenant in occupation filed an obstruction petition. The said proceedings was taken to the High Court. Simultaneously the mortgagor put forward a claim for mesne profits against the mortgagee and he also initiated proceedings under the Rent Control Act, for eviction of the tenant. The question that came for consideration was, whether the mortgagee was liable for profits, and what is the effect of the proceedings initiated by the mortgagor, under the Rent Control Act. A learned Judge of this Court held that when the mortgagor is willing to accept the attornment of tenancy, the liability of the mortgagee to deliver khas possession of the property no more exists and the mortgagee is not liable for profits thereafter. The learned Judge also considered the effect of taking rent control proceedings against the tenant. It was held thus :--

"Two questions arise for consideration. The first is as regards the obligation of a usufructuary mortgagee, who has let a tenant into possession after the execution of the mortgage in his favour to put the mortgagor in actual possession of the property on redemption. It is not disputed that when a mortgagor puts a mortgagee in possession of property under a usufructuary mortgage the former has a right, when he has discharged the mortgage debt, to redelivery of the possession of the property from the mortgagee. The position, however, that is sought to be maintained by learned counsel for the respondent is that this obligation is fulfilled by the mortgagee issuing a notice to the tenant whom he had inducted into possession to deliver possession to or attorn to the mortgagor, and that he was not concerned to see whether the tenant did so or not. I cannot agree that this is the law. In cases where such tenant attorns to the mortgagor and the mortgagor accepts the attornment there would doubtless be an effective delivery of possession, which would terminate all further liability on the part of the mortgagee, but where there is no attornment either because mortgagor refuses to accept the person in occupation as his tenant or because though the mortgagor is willing to accept the person in possession as his tenant, the latter refuses to do so, the mortgagor is entitled to insist that khas possession should be delivered to him and not merely such possession as is involved by a mere direction by the mortgagee to his tenant to attorn to the mortgagor"

In regard to the later question, the learned Judge held thus:--

"But when once the mortgagor has taken proceedings against the tenant put in by the mortgagee, before the Rent Controller under the Madras Buildings (Lease and Rent Control) Act on the basis of recognising the tenancy he has elected his remedy and will be estopped from holding the mortgagee liable for delivery of possession or for mesne profits. The fact that the tenant in such a case has refused to attorn would not make any difference as it is the conduct of the

mortgagor that matters and the attitude of the tenant is wholly irrelevant."

33. On the basis of the above settled position of law, let us now consider the facts of this case.

34. As per Ex. A4 document, the mortgagee authorises the mortgagor to realise all the arrears of rent from the respondents that were due to him and also to get all future rent from them. By authorising to get future rent, and the mortgagor accepting the same, it amounts to adoption of the tenancy created by the mortgagee, by the mortgagor. By issuing the notice Ex. A5 claiming all arrears of rent till date, it follows that they are treating respondents 1 and 2 as their tenants and wanted them to surrender vacant possession of the property. Three months after that, eviction petition was filed. There also, rent till that time is claimed with arrears of rent. So, from the above facts, it is clear that the mortgagor has elected to treat the tenants of the mortgagee as their tenants. By such election, it follows that the lease created by the mortgagee binds the mortgagors and, therefore, a landlord and tenant relationship is created. Further, Ex. A-4 is executed in lieu of physical delivery of possession, i.e., by exercising an act of redemption. It is an act both by the mortgagors and the mortgagee. If so, it can be taken that the lease executed by the mortgagee is concurred and jointly executed by the mortgagor. Therefore, after redemption, the tenant becomes a tenant of the mortgagor and the Rent Control Act applies. The question of prudent management by the mortgagee which was the subject-matter in discussion in the decision reported in *S.V. Venkatarama Reddiar Vs. Abdul Ghani Rowther and Others*, has no application to the facts of this case.

35. Once the mortgagor affirms a tenancy, it necessarily binds him. He, therefore, becomes a landlord entitled to receive the rent under the Rent Control Act.

36. Once I hold that the original petitioners herein were the landlords, naturally they are entitled to get eviction if other conditions under the Act for eviction are satisfied.

37. Admittedly, from the date of redemption, till the date of the filing of the petition or thereafter, rent has not been paid. A demand was made for payment. They were informed about the default. The demand was not complied with. Eviction proceedings were initiated three months after. They justified the non-payment only on the ground that the original petitioners were not landlords and they were not entitled to receive rent. Their action in not paying the rent in spite of the fact that the original petitioners have concurred with the actions of the mortgagee can be termed only as wilful default. That apart, huge amount was due to the mortgagee towards arrears of rent. From Ex. A-4 it is clear that for nearly six years prior to Ex. A-4, rent was not being paid. That right is also assigned to the mortgagor. Assigning the right to realise the arrears of rent is not an actionable claim, but a ground of eviction, is clear from the decision reported in (1982) 3 SCC 364. In the said decision, the Apex Court has held thus:--

"This SLP is directed against the judgment of the Andh"ra Pradesh High Court confirming an order of eviction passed against the petitioner. I do not see any reason to interfere with the order passed by the High Court, but there is one point to which I must refer, and that arises out of a decision of the Calcutta High Court in *Daya Debi v. Chapala Debi*. That decision has taken the view that when a claim for arrears of rent is assigned by A to B, it loses the character of a claim for rent as soon as it is assigned and it becomes merely an actionable claim. This view is, of course, not shared by most of the other High Courts and even the Calcutta High Court itself in other decisions has not accepted this view. It does appear to me that this view is not correct because it is difficult to see how a claim for arrears of rent ceases to be such when it is assigned by the owner when he transfers his properties to another. So far as the tenant is concerned, the amount remains payable by him to the successor landlord as arrears of rent because that is his own liability and it does not acquire any other character. And so also when the successor landlord claims the amount assigned to him his cause of action against the tenant would be for arrears of rent because there is no other basis on which he found his cause of action against the tenant. There is, therefore, no doubt that in the present case the 1st respondent who was the assignee of the claim for arrears of rent from the predecessor landlady was entitled to recover the arrears of rent from the petitioner and the arrears of rent were due from the petitioner to the 1st respondent at the date when the application was made before the Rent Controller by the 1st respondent for an order of eviction against the petitioner..."

That will be sufficient to order eviction in this case. That apart, the denial of title by the respondents that the petitioners are not landlords is also not bona fide. The fact as to how the petitioners became landlords has also been informed to them in writing. The respondents did not dispute the same. But, in spite of that, they said that the petitioners cannot be landlords, and there is no such relationship with them. Such a conduct on their part will show that their denial of title is lacking in good faith and they are liable to be evicted for that reason also. It is settled law that the denial of title need not be antecedent to the proceedings, If from facts it is clear that there is denial of title, that itself can be a ground for eviction without relegating the landlords for filing separate proceedings.

38. In the result, I set aside the judgment of the Appellate Authority and restore the Order of the Rent Controller. There will be an order of eviction against the respondents tenants. The Civil Revision Petition is allowed with costs throughout.

39. Revision allowed.