HANUMANT KUMAR TELESARA

v.

MOHAN LAL

DECEMBER 1, 1987

[A.P. SEN AND B.C. RAY, JJ.]

Rights of tenant of mortgaged property let out by mortgagee to continue in possession of the property after redemption of the mortgage—Mortgagor's right to have possession of the property after redemption.

The respondent mortgaged his shop and delivered possession thereof to the mortgagees with the right to collect rent from the tenant in payment of the interest on the mortgage amount. The mortgagees let out the premises to the appellant (tenant), during the subsistence of the mortgage.

The respondent filed a suit against the mortgagees for redemption of the mortgage and recovery of vacant possession of the mortgaged shop. The appellant-tenant was also impleaded as a party-defendant in the suit. The suit was decreed and the mortgage was redeemed, with an order to the mortgagees to give possession of the shop to the respondent. The appellant-tenant filed an application under Section 47, read with Section 151 of the C.P.C. stating that the decree of redemption could not be executed and possession given by the mortgagees to the respondent/decree-holder, as the tenancy of the appellant subsisted and the same had not been terminated under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. This plea of the appellant was rejected by the executing Court which held that the decree was executable and the appellant had no interest and he could not resist the execution of the decree.

Against this Judgment and Order of the court, the appellant filed an appeal which was allowed. Thereupon, the respondent preferred a second appeal which was allowed by the High Court. The appellant appealed to this Court by special leave against the order of the High Court.

Dismissing the appeal, the Court on a conspectus of the various decisions of the Court on the subject,

HELD: The lease given by the mortgagee during the subsistence of the mortgage came to an end on the redemption of the mortgage. The tenant of the mortgagee in possession is not entitled to the protection of the Rent Act against the mortgagor after redemption of the mortgage, as held by the Rajasthan High Court in 1984 R.L.R. 709, following the decisions of this Court. The letting out of the premises to the appellant-tenant was not a prudent act done in the ordinary course of management, as held by all the Courts below. The respondent/mortgagor-landlord is entitled to get recovery of possession. [106A-D]

M/s. Sachalmal Parasram **v.** *Mst. Ratanbai and Ors.*, **AIR 1972 (SC) 637;** *The All India Film Corp. Ltd. & Ors.* **v.** *Sri Raja Gyan Nath & Ors.* **[1969] 3 SCC 79;** *Mahabir Gope & Ors.* **v.** *Harbans Narain Singh & Ors.*, **[1952] 3 SCR 775;** *Harihar Prasad Singh & Anr.* **v.** *Must. of Munshi Nath Prasad & Ors.*, **[1956] SCR 1;** *Asa Ram & Anr.* **v.** *Mst. Ram Kali Anr.* **AIR 1958 (SC) 183 and** *Om Prakash Garg* **v.** *Ganga Sahai & Ors.* **JT 1987 1 SC 245, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2524 of 1985.

From the Judgment and Order dated 26.11.1984 of the Rajasthan High Court in S.A. No. 12 of 1976.

Shankar Ghosh, B.P. Maheshwari and B.S. Dorpura for the Appellant.

V.M. Tarkunde, S.K. Jain, Himansu Atrey and Mrs. Probha Jain for the Respondent.

The Judgment of the Court was delivered by

RAY, J. This is an appeal by special leave against the judgment and order dated 26th November, 1984 in S.B. Civil Execution Second Appeal No. 12 of 1976 whereby the appeal was allowed and respondent was granted one year time to vacate the premises.

The facts giving rise to this appeal are as follows:-

The respondent mortgaged the shop belonging to him to the defendant Nos. 1 to 11 on 9th May, 1950 by a registered mortgage deed. The possession of the premises was given to the

mortgagees with right to collect rent from the tenant in payment of interest on the mortgage amount. the mortgagees let out the premises to the defendant petitioner during the subsistence of mortgage.

The respondent filed a suit for redemption of the mortgage and for vacant possession of the said shop against the mortgagees i.e. the defendant Nos. 1 to 11. The appellant who was the tenant of the shop was impleaded as party defendant No. 12 in the suit. The suit was decreed and the mortgage was redeemed. There was an order for giving vacant possession of the shop by the defendant Nos. 1 to 11 to the respondent i.e. the owner of the shop. In Execution case No. 126 of 1975 the tenant appellant filed an application under Section 47 read with Section 151 of the Code of Civil Procedure, 1908 stating *inter alia* that the decree could not be executed and possession of the shop could not be given by the mortgagees to the decree-holder respondent as the tenancy of the appellant subsisted and the same had not been terminated under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. This plea was rejected by the executing court holding *inter alia* that letting out of the shop to the defendant No. 12 by the mortgagees was held to be not a *bona fide* act made as a person of ordinary prudence in the course of management of the property under Section 76A of Transfer of Property Act and that the relationship of the lessor and lessee could not subsist beyond the mortgagee's interest unless a new relationship was created between the landlord and the tenant-appellant. It was also held that the termination of the mortgagee's interest put an end to the relationship of landlord and tenant and the provisions of the Rent Control Act could not apply any further. The decree was executable and the appellant had no interest and as such he could not resist the execution of the decree. The application was dismissed.

Against this judgment and order the appellant filed an appeal being Civil Appeal No. 13 of 1976. The said appeal was, however, allowed on a finding that the provisions of Section 13(1) of the Rajasthan Rent Control Act expressly ruled out the operation of the Transfer of Property Act and a person inducted as a tenant on the premises in a lawful manner could not be evicted except in accordance with the provisions of the Act. The decision in *M/s Sachalmal Parasram* v. *Mst. Ratanbai & Ors.*, AIR 1972 (SC) 637 and *The All India Film Corp. Ltd. and Ors.* v. *Sri Raja Gyan Nath & Ors.*, [1969] 3 S.C.C. 79 were held to be not applicable to the instant case. The interest of the appellant as a tenant subsists even after redemption of the mortgage until it is terminated in accordance with the provisions of the aforesaid

A Rajasthan Premises (Control of Rent and Eviction) Act, 1950.

The respondent preferred a second Appeal being S.B. Civil Execution Second Appeal No. 12 of 1976. The said appeal was allowed by the High Court relying on the full bench decision of the High Court in 1984 R.L.R. page 709. On the prayer of the appellant B one year time was granted, on the expiry of which possession of the said premises shall have to be delivered. A written undertaking to that effect had been filed by the appellant in compliance with the directions of the Court.

The appellant thereafter filed the instant appeal on special C leave.

The following two questions come up for consideration in this appeal: (i) whether a tenant of a mortgagee can continue as a tenant after redemption of the mortgage decree until he is evicted from the suit premises in accordance with the provisions of the Rajasthan D Premises (Control of Rent and Eviction) Act, 1950; and (ii) whether the tenancy created in favour of the appellant can be deemed to be an act of ordinary prudence on the part of the mortgagee in managing the property falling within Section 76A of the Transfer of Property Act.

E Identical questions fell for consideration in *Mahabir Gope and Ors.* v. *Harbans Narain Singh and Ors.*, [1952] 3 S.C.R. 775. In this case the mortgagors mortgaged argicultural lands with possession by ijara to the mortgagee to the effect that the mortgagee would cultivate the land and take the crops. The mortgagee during the subsistence of the mortgage leased out the land to a tenant. The mortgage F was redeemed on payment of the mortgage debt. The mortgagor on being opposed by the tenant to have the possession of the mortgaged property, filed a suit for recovery of the possession of the land. It ultimately came up before this Court and it was held as follows:

> "The general rule is that a person cannot by transfer or G otherwise confer a better title on another than he himself has. A mortgagee cannot, therefore, create an interest in the mortgaged property which will enure beyond the termination of his interest as a mortgagee. Further, the mortgagee, who takes possession of the mortgaged property, must manage it as a person of ordinary prudence H would manage it if it were his own and he must not

commit any act which is destructive or permanently injurious to the property; see section 76, sub-clauses (a) & (e) of the transfer of Property Act. It follows that he may grant leases not extending beyond the period of the mortgage; any leases granted by him must come to an end at redemption. A mortgagee cannot during the subsistence of the mortgage act in a manner detrimental to the mortgagor's interests such as by giving a lease which may enable the tenant to acquire permanent or occupancy rights in the land thereby defeating the mortgagor's right to khas possession; it would be an act which would fall within the provisions of Section 76, sub-clause (e), of the Transfer of Property Act.

A permissible settlement by a mortgagee in possession with a tenant in the course of prudent management and the springing up of rights in the tenant conferred or created by statute based on the nature of the land and possession for the requisite period is a different matter altogether. It is an exception to the general rule. The tenant cannot be ejected by the mortgagor even after the redemption of the mortgage. He may become an occupancy raiyat in some cases and a non-occupancy raiyat in other cases. But the settlement of the tenant by the mortgagee must have been a *bona fide* one. This exception will not apply in a case where the terms of the mortgage prohibit the mortgagee from making any settlement of tenants on the land either expressly or by necessary implication."

It was held that the settlement was not a *bona fide* one and a successor of the tenant did not acquire permanent right of tenancy in the demised lands under Bihar Tenancy Act.

In Harihar Prasad Singh & Anr. v. *Must. of Munshi Nath Prasad & Ors.*, [1956] S.C.R. 1 where the mortgage was in respect of agricultural lands, this Court held:-

"The law is that a person cannot confer on another any right higher than what he himself possess, and therefore, a lease created by a usufructuary mortgagee would normally terminated on the redemption of the mortgage. Section 76(a) enacts an exception to this rule. If the lease is one

A which could have been made by the owner in the course of prudent management, it would be binding on the mortgagors, notwithstanding that the mortgage has been redeemed. Even in such a case, the operation of the lease cannot extend beyond the period for which it was granted. In the present case, assuming that the mortgagees had the B power under Section 76(a) of the Transfer of Property Act to continue the lessees under Exhibit 2(a) as tenants on the lands after the termination of the period fixed therein, that would confer on them at best the status of tenants from year to year and not give them the right to continue in possession after the termination of the agricultural year C during which the redemption takes place."

This Court while considering the ambit of provisions of Section 76(a) of the Transfer of Property Act observed in *Asa Ram and Another* v. *Mst. Ram Kali and Another,* A.I.R. 1958 (SC) 183 as follows:

D "The law undoubtedly is that no person can transfer property so as to confer on the transferee a title better than what he possesses. Therefore, any transfer of the property mortgaged, by the mortgagee must cease, when the mortgage is redeemed. Now, S. 76(a) provides that a mortgagee in possession must manage the property as a person of ordi- E nary prudence would manage it if it were his own. Though on the language of the statute, this is an obligation cast on the mortgagee, the authorities have held that an agricultural lease created by him would be binding on the mortgagor even though the mortgage has been redeemed, provided it is of such a character that a prudent owner of property would F enter into it in the usual course of management. This being in the nature of an exception, it is for the person who claims the benefit thereof, to strictly establish it."

It has been further observed that if there is a prohibition on mortgagee in letting of lands, the lease will not be binding on the G mortgagors. But where there is no such prohibition the parties will be thrown back on their rights under the Transfer of Property Act, and lessees must establish that the lease is binding on the mortgagors under Section 76(a) of that Act.

The act of the mortgagors leasing out the lands to tenants on the terms set out in the kabuliat was held to be neither prudent nor H *bona fide* and as such the lease was not binding on the mortgagors.

In *All India Film Corp. Ltd. & Ors.* v. *Sri Raja Gyan Nath & Ors.*, (supra), the owner of the property in dispute known as Odeon Cinema mortgaged the property with possession to mortgagees. The mortgagor, however, migrated to Pakistan in 1947. The mortgagees leased out the property to All India Film Corp. Ltd. with option of yearly renewal for 10 years. The property being an evacuee property, the Competent Officer after determining the mortgage charge sold the property. The respondent purchased the property but could not get possession as sub-tenants claimed benefit of East Punjab Rent Restriction Act (3 of 1949). The purchaser filed a suit for possession of the property from the Head lessee and sub lessee. It was held by this Court:-

> "The termination of the mortgagee 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. Nor could it be said that when the mortgagor cancelled the rent note and authorised the mortgagee to find any other tenant, the intention was to allow expressly a tenancy beyond the term of the mortgage. In this view of the matter the decision of the High Court and the Court the below cannot be said to be erroneous."

Following the above observations, this Court in *M/s Sachalmal Parasram* v. *Mst. Ratanoai and Ors.*, (supra) has observed that tenancy created by the mortgagee in possession does not survive the termination of the mortgagee's interest. After termination of mortgagee's interest the relationship of landlord and tenant does not survive and the claim of protection of Tenancy Act is not available to the tenant inducted by the mortgagee. The lease was also held to be not an act of prudent management.

In the case of *Om Parkash Garg* v. *Ganga Sahai & Ors.*, JT 1987(1) S.C. 245. In which one of us was a party, this Court observed that the lease in question being held to be not an act of prudent management on the part of the mortgagee within the meaning of Section 76(a) of the transfer of Property Act, 1882, the alleged lease could not subsist after termination of the mortgage by passing of the final decree of redemption and the appellant could not take advantage of the act as there was no subsisting lease in his favour.

A On a conspectus of all these decisions we hold that the lease given by mortgagee during the subsistence of the mortgage came to and end on the redemption of the mortgage. It is pertinent to mention that the question whether after termination of mortgagee's interest on redemption of mortgage the lessees can claim the benefit of Rent Act was considered by the Full Bench of Rajasthan High B Court in 1984 (R.L.R., 709) and the High Court following the decisions of the Supreme Court has answered that "Tenant of the mortgagee in possession is not entitled to the protection of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 against the mortgagor after redemption of the mortgage." We fully agree with this view.

C

There is specific finding by all the courts below in the suit for redemption that the letting out of the premises to the tenant-appellant by the mortgagees is not a prudent act done in the ordinary course of the management. This finding being not challenged became final. The mortgagor-landlord is entitled to get recovery of posses- D sion. We, therefore, affirm the judgment and order of the High Court and dismiss the appeal. In the facts and circumstances of the case, there will be no order as to costs.

S.L. Appeal dismissed.