

(6) Shri Bhgirath Dass Senior Advocate appearing for the assessee had argued that the questions referred were purely of fact. Firstly, both questions were formulated by this Court while issuing mandamus to the Tribunal for referring the question, and secondly, the very basis of the decision of the Tribunal has been knocked out by Full Bench decision of this Court in *Vishwakarma Industries's case* (supra). Therefore, both the questions have to be decided in the light of the Full Bench judgment. Consequently, we reject the argument.

(7) Then our attention was invited to decision of this Court in Commissioner of *Income Tax Patiala v. Sunanda Trading Corporation*, (4) for the proposition that in that case on similar facts the department filed an application under section 256(2) of the Act and this Court declined to issue mandamus after observing that the questions sought to be referred were essentially questions of fact.; whereas in this case, this Court issued mandamus and sought reference of the two questions of law along with statement of the case, and that is how the matter is before us. We have to answer the questions of law on the facts and circumstances of this case keeping in view the Full Bench decision. Hence, the learned counsel cannot seek any assistance from that case.

(8) In view of the above, the answer to question No. 2 has to be that on the facts and circumstances of this case the Tribunal was not right in holding that no penalty was exigible.

(9) For the reasons recorded above, we answer both the questions referred to us in favour of the department-Revenue and against the assessee i.e. in the negative. However, there will be no order as to costs.

N.K.S.

Before J. V. Gupta, J.

KISHAN SINGH,—Appellant.

versus

KHARAITI RAM AND OTHERS,—Respondents.

Regular Second Appeal No. 2646 of 1983.

August 30, 1985.

Transfer of Property Act (IV of 1882)—Sections 76(a) & 111(c)—East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Mortgage of a shop with possession—Mortgage deed stipulating that

(4) (1980)122 I.T.R. 514.

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the mortgagee could induct a tenant—Such a tenant—Whether could be asked to deliver possession on the redemption of the mortgage.

Held, that the tenancy comes to an end after redemption even if the tenant was inducted by the mortgagee in view of the stipulation in the mortgage deed that he could lease out the same to any person. Such a stipulation in the mortgage deed does not mean that the mortgagee had been given the express right to create tenancy which might subsist beyond the extinction of the mortgage. Such a tenancy comes to an end at the time of extinction or redemption of the mortgage and the mortgager is entitled to get actual possession of the mortgaged shop from the tenant inducted by the mortgagee.

(Para 9)

Regular Second Appeal from the decree of the Court of the Additional District Judge, Patiala dated the 15th day of November 1983 affirming that of the Sub Judge 1st Class, Rajpura (A) dated the 5th day of August, 1981, passing a preliminary decree in favour of the plaintiff for possession by way of redemption of the mortgage of the shop in dispute subject to their depositing in court Rs. 3,000 within three months from that day. Further ordering that in case the amount is not so deposited, the suit shall stand dismissed with cost. If, however, the amount is so deposited within the time specified, the plaintiff would be entitled to apply for passing of the final decree.

R. C. Setia, Advocate, for the Appellant.

G. R. Majithia, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) This is defendant's second appeal against whom decree for possession has been passed by both the Courts below.

(2) The plaintiffs Kharaiti Ram and Babu Ram mortgaged with possession the shop in dispute with Assa Ram, the predecessor-in-interest of the defendants Nos. 1 and 2 for a sum of Rs. 3,000 on 18th January, 1957. Accordingly possession was handed over of the shop to the mortgagee. During the mortgage, the mortgagee had inducted Kishan Singh as tenant (the present appellant) in the shop in dispute. Hence the present suit was filed for redemption against the mortgagee as well as against the defendant Kishan Singh.

(3) The suit was contested by Kishan Singh, tenant, on the plea that he was tenant under the mortgagors prior to the mortgage and, therefore, he was not liable to eviction on redemption.

In the alternative, he pleaded that he was tenant of the mortgagee with the consent of the mortgagors and, therefore, he would continue to be the tenant even after redemption.

(4) On the appreciation of the entire evidence, the trial Court found that although Kishan Singh, tenant, had been inducted by the mortgagee himself, there was no consent by the mortgagors for this tenancy. Though in the mortgage deed, it was provided that the mortgagee could use the shop either himself or could induct a tenant of his choice, but that did not mean that the mortgagors consented that the said tenancy will continue even after redemption. Consequently, the plaintiffs' suit was decreed against Kishan Singh tenant as well.

(5) In appeal filed by Kishan Singh, tenant, the learned Additional District Judge affirmed the findings of the trial Court and, thus, maintained the decree passed in favour of the plaintiffs. Dissatisfied with the same, the tenant Kishan Singh has filed this second appeal in this Court.

(6) At the time of motion hearing, reliance was placed on *The All India Film Corporation v. Raja Gyan Nath*, (1). Since the question involved was a pure question of law, it was directed that the appeal be set down for hearing within one year.

(7) The learned counsel for the appellant contended that since in the mortgage deed itself it was provided that the mortgagee may induct the tenant and since the appellant was inducted as a tenant by the mortgagee, then he will be deemed to have been inducted with the consent of the mortgagors and, therefore, he could not be dispossessed on redemption. Reference was made to *The All India Film Corporation's case* (supra).

(8) On the other hand, the learned counsel for the plaintiffs-respondents referred to *Kartar Singh v. Harbans Singh*, (2) *Charan Dass v. Om Parkash and others*, (3) *M/s Sachalmal Parasram v. Mst. Ratanbai and others*, (4) and *Mohan Singh and another v. Ramji Dass and others*, (5) in which the said judgment of the Supreme Court was considered and distinguished.

(1) 1970 P.L.R. 578.

(2) 1978(2) All India Rent Control Journal 1.

(3) 1983(1) R.L.R. 251.

(4) A.I.R. 1972 S.C. 637.

(5) 1978(1) All India Rent Controller Journal 404.

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(9) After hearing the learned counsel for the parties, I do not find any merit in this appeal. In the judgment of the Supreme Court in *The All India Film Corporation's case* (supra), strong reliance was placed on the observations that "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." However, in that very case, later on in para 11, it was observed that "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." Consequently, in the Supreme Court the tenant was dispossessed in execution of the decree for redemption. Similarly, in the present case, there is nothing to show on the record that there was any express intention to allow the tenancy beyond the term of the mortgage. Moreover, this case was considered later on by this Court in the judgments referred to above and it was held therein that the tenancy comes to an end after redemption even if the tenant was inducted by the mortgagee in view of the stipulation in the mortgage deed that he could lease out the same to any person. In *Mohan Singh's case* (supra) it was held that "such a stipulation in the mortgage deed does not mean that the mortgagee had been given the express right to create tenancy, which might subsist beyond the extinction of the mortgage. Such a tenancy comes to an end at the time of extinction or redemption of the mortgage and the mortgagor is entitled to get actual possession of the mortgaged shop from the tenant inducted by the mortgagee."

(10) In this view of the matter, the appeal fails and is dismissed with costs.

N.K.S.