

A PURAN CHAND (D) THROUGH LRS. AND ORS.

v

KIRPAL SINGH (D) AND ORS.

DECEMBER 15, 2000

B [SYED SHAH MOHAMMED QUADRI AND RUMA PAL, JJ.]

C *Transfer of Property Act, 1882—Section 76(a)—Mortgage—Redemption of—Tenant—Possession—Continuance of—Tenancy created by a mortgagee—Right of the mortgagee's tenant to continue in possession being co-terminus with his interest as mortgagee—Exception—Lease created by a mortgagee being binding on the mortgagor, the tenant could continue in possession despite redemption—Applicability of the exception—Erstwhile prior mortgagees of the land wherein their father was already a tenant—Redemption of the prior mortgage by payment to them—Claim to remain in occupation*
D *of land as tenants claiming to have inherited their father's tenancy rights to the land—Tenability of—Held, they have no right to continue in possession of the mortgaged land after redemption of the mortgage—Being mortgagees, their father in effect became a tenant under them and they could not become their own tenants—When a landlord transfers his rights in the leased property in his tenant, there would be a merger of the rights as owner and tenancy*
E *would come to an end—Pepsu Tenancy and Agricultural Lands Act, 1955—Sections 8-B, 18.*

F The land in question was owned by one R, predecessor-in-interest of the appellants. He mortgaged the land with possession to respondent no. 3 who sold his interest in the land to L. L. inducted B, the father of respondents 1 and 2, as a tenant in respect of the said land. After the death of L, his son sold his rights as a mortgagee which he had inherited, to respondents 1 and 2 by two separate deeds. Respondents 1 and 2, therefore, became the mortgagees of the entirety of the disputed land. Subsequently, B died and respondents 1 and 2, as his sons, claimed to have inherited his tenancy rights to the land.
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H In the meanwhile R, died leaving behind him his widow, respondent No. 6 and four daughters, appellants 2 to 4 and respondent No. 5. R had executed a will in favour of his four daughters by which he bequeathed the land to them. All four daughters executed a second mortgage with possession of the land in favour of appellant No. 1.

Subsequently, the four appellants filed a suit for redemption of the prior mortgage against respondents 1 and 2. The suit was decreed in favour of appellant No. 1 and he was given the right to redeem the first mortgage and obtain possession of the land upon payment of specified amount. Appeal preferred by respondents 1 and 2 was dismissed whereafter a second appeal was preferred before the High Court.

During pendency of the second appeal, mortgage of appellant No. 1 was wholly redeemed by appellant Nos. 2 to 4 and they resumed full ownership of the land. During this time, the fourth daughter of R, respondent No. 5, sold her share of the equity of redemption in the land in favour of respondents 1 and 2 by two separate deeds. Respondents 1 and 2, thus, filed an application before the Collector, claiming redemption against appellant No. 1 in respect of 1/4th of the land sold to them by respondent No. 5. The Collector dismissed the application. The respondents then filed two applications in the pending second appeal before the High Court; the first application was to bring on record the fact of the purchase of one-fourth share of the land from respondent No. 5 and the second for being allowed to redeem the mortgage of appellant No. 1 in respect of such one-fourth interest. The second appeal filed by respondents 1 and 2 was allowed. Hence the present appeal.

On behalf of the respondents, it was contended that they inherited the tenancy right of their father on the basis of Sections 8B and 18 of the Pepsu Tenancy and Agricultural Lands Act, 1955 and thus claimed their continuance in occupation as tenants despite redemption of the mortgage.

Allowing the appeal, the Court

HELD: 1.1. Respondents 1 and 2 had and have no right to continue in possession of the mortgaged land after redemption of the mortgage except to the extent of their purchase of respondent No 5's share. Section 8-B of the Pepsu Tenancy and Agricultural Lands Act, 1955 is for the benefit of a tenant to whom the subject matter of the tenancy may be subsequently mortgaged. It cannot apply in this case because there is no subsisting tenancy. In upholding the right of respondents 1 and 2 under the Section, the High Court appears to have lost sight of the fact that the tenancy of father of respondents 1 and 2 had been created by L. After L's death, his son S, became the landlord. When S transferred all his rights *vis-a-vis* the land to respondents 1 and 2, respondents 1 and 2 became the landlords and their father in effect became a tenant under them. Therefore, when their father died, his tenancy rights could not be inherited by them for the simple reason that they were his landlords

A and could not become their own tenants. When a landlord transfers his rights in the leased property in his tenant there would be a merger of the rights of the tenant in his higher right as owner and the tenancy would come to an end under Section 111(d) of the Transfer or Property Act. [764-E, F, G]

B 1.2. The right of the mortgagee's tenants to continue in possession is co-terminus with the mortgagee's right to do so on the principle that no one can give a better right than he has himself. There is an exception to the principle - in certain circumstances a lease created by a mortgagee may be binding on the mortgagor. The said exception will apply only when the mortgage deed expressly or by necessary implication gives the mortgagee the power to lease. In addition the tenancy should have been created *bonafide* in the course of prudent management under Section 76(a) of the Transfer of Property Act, 1882 and finally, the rights of the tenant must be protected by statute. If the principle was to be applied to the present case, respondents 1 and 2 would have to establish the consent of the mortgagor to the creation of the tenancy by the mortgagee. In fact it was never the case of the respondents that the tenancy was created by the mortgagee in terms of the mortgage deed. Similarly, respondents 1 and 2 have singularly failed to prove the ingredients of Section 76(a) of the Transfer of Property Act.

[760-G; 761-E; 762-A, B; 763-B, C, D]

E *Mahabir Gope and Ors. v. Harbans Narain Singh and Ors.*, [1952] 3 SCR 775; *Asa Ram v. Mst. Ram Kali*, [1958] SCR 988; *Pomal Kanji Govindji v. Vrajilal Karsandas Purohit*, AIR (1989) SC 436 and *G. Ponniah v. Nallevam Perumal Pillai*, AIR (1977) SC 244, relied, on.

F *Harihar Prasad Singh and Anr. v. Must. of Mushi Nath Prasad and Ors.*, [1956] SCR 1; *Prabhu v. Ramdev & Ors.*, [1996] 3 SCR 676; *All India Film Corporation Ltd. v. Shri Raja Gyan Nath*, [1970] 2 SCR 581; *M/s Sanchalmal Parasram v. Mst. Ratanbai*, AIR (1972) SC 637; *Jadavji Purshottam v. Dhami Navnitbhai Amaratlal*, AIR (1987) SC 2146; *Om Prakash Garg v. Ganga Sahai*, AIR (1988) SC 108 and *Hanumant Kumar Talesara v. Mohan Lal*, AIR (1988) SC 299, referred to.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8395 of 1983.

From the Judgment and Order dated 25.1.83 of the Punjab and Haryana High Court in R.S.A. No. 936 of 1978.

H Kailash Vasdev, Sanjay Kumar, Dev Dutt, Prashant Kumar, V.D. Khanna,

Ms. Varuna Bhandari and S.C. Patel, for the appearing parties.

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The Judgment of the Court was delivered by

RUMA PAL, J. The Appellants Nos. 2 to 4 are the owners of 247 Kanals and 15 marlas of agricultural land situated in the district of Patiala. The Appellant No. 1 is the erstwhile second mortgagee of the land. The Respondents Nos. 1 and 2 were the erstwhile prior mortgagees of the land and also claim to be tenants of the land. The question to be determined is whether despite redemption of the prior mortgage by payment to the respondents 1 and 2, they can claim to remain in occupation of the land as tenants.

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The land was owned by Raunaq Ram, predecessor-in-interest of the appellants. Raunaq Ram mortgaged the land with possession to Amar Singh (the respondent No. 3 before us) on 22nd March 1950. During the year 1951-52, Amar Singh sold his interest in the land to Labhu Ram. Labhu Ram inducted Bir Singh, the father of the respondents 1 and 2, as a tenant in respect of the land in November 1953. After Labhu Ram's death, his son Sat Paul sold his rights as a mortgagee which he had inherited from Labhu Ram to the respondents 1 and 2 by two deeds dated 14th January 1963 and 5th December 1966. The respondents 1 and 2, therefore, became the mortgagees of the entirety of the disputed land by 1966. In 1971, Bir Singh died. The respondents 1 and 2, as his sons, claim to have inherited his tenancy rights to the land.

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In the meanwhile, Raunaq Ram had died leaving behind him his widow, Ram Piari (respondent No. 6) and four daughters, namely, Purni, Lachhmi, Sheela (the appellants 2 to 4) and Dayawanti (respondent No. 5). Raunaq Ram had executed a will in favour of his four daughters by which he bequeathed the land to them. All four daughters executed a second mortgage with possession of the land in favour of Puran Chand (appellant No. 1).

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On 26th August 1971, the four appellants filed a suit for redemption of the prior mortgage against the respondents 1 and 2. The defence of the respondents 1 and 2 that they were entitled to continue in possession of the land as tenants of Labhu Ram was negatived on the ground that since the respondents had purchased Labhu Ram's interest as mortgagee with possession of the land before their father expired, they did not inherit any tenancy rights as they could not be their own tenants. The suit was accordingly decreed in favour of the appellant No. 1 on 28th April 1977 and he was given the right to redeem the first mortgage and obtain possession of the land upon

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A payment of Rs. 18,000 on or before 28th April 1977. The Appellant No.1 duly deposited Rs. 18,000 in Court pursuant to the decree. The respondents 1 and 2 preferred an appeal but their appeal was dismissed. The respondents 1 and 2 then preferred a second appeal before the High Court.

B During the pendency of the second appeal, two significant events took place. First, Puran Chand's mortgage was wholly redeemed by the appellants 2 to 4 so that they resumed full ownership of the land. The second event was that Dayawanti, (the respondent No.5 before us, the fourth daughter of Raunaq Ram), sold her share of the equity of redemption in the land in favour of the respondents 1 and 2 by two separate deeds dated 8th September 1977 and 11th January 1978. The respondents 1 and 2 filed an application claiming redemption against Puran Chand in respect of 1/4th of the land sold to them by Dayawanti before the Collector. The Collector dismissed the application. The respondents then filed two applications in the pending second appeal before the High Court; the first application was to bring on record the fact of the purchase of 1/4th share of the land from Dayawanti and; the second for being allowed to redeem the mortgage of Puran Chand in respect of such 1/4th interest.

E The second appeal was disposed of by the High Court on 25th January 1983. The High Court held that despite the fact that the decree had been passed in favour of Puran Chand, because the appellants 2 to 4 had redeemed his mortgage, they were entitled to the benefit of the decree. The High Court also held that the Trial Court and the First Appellate Court were not in error in decreeing the suit for redemption against the respondents 1 and 2 and that the prior mortgage had in fact been redeemed. The High Court, however, allowed the second appeal of the respondents 1 and 2 by holding that they were entitled to continue in actual physical possession of the land as tenants despite the decree of redemption. According to the High Court the respondents rights as tenants did not merge with their rights as mortgagees and therefore even on redemption of the mortgage, their tenancy rights survived.

G Normally the right of the mortgagee's tenants to continue in possession is co-terminus with the mortgagees right to do so on the principle that no one can give a better right than he has himself. This maxim was recognised in the locus Classicus. *Mahabir Gope and Ors. v. Harbans Narain Singh and Ors.*, [1952] 3 SCR 775 when it said:

H "The general rule is that a person cannot by transfer or 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 mortgagee. Further, the mortgagee, who takes possession of the mortgaged property, must manage it as a person of ordinary prudence 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 the Property Act.

The principle enunciated in *Mahabir Gope* has been consistently followed. [See: *Harihar Prasad Singh and Another v. Mst. of Munshi Nath Prasad and Others*, [1956] SCR 1; *Asa Ram v. Mst. Ram Kali*, [1958] SCR 988; *Prabhu v. Ramdev & Ors.*, [1966] 3 SCR 676; *All India Film Corporation Ltd. v. Shri Raja Gyan Nath*, [1970] 2 SCR 581; *M/s Sachalmal Parasram v. Mst. Ratanbai*, AIR (1972) SC 637; *Jadavji Purshottam v. Dhami Navnitbhai Amaratlal*, AIR (1987) SC 2146; *Pomal Kanji Govindji v. Vrajlal Karsandas Purohit*, AIR (1989) SC 436; *Om Prakash Garg v. Ganga Sahai*, AIR (1988) SC 108 and *Hanumant Kumar Talesara v. Mohan Lal*, AIR (1988) SC 299].

Mahabir Gopes case also recognized an exception to the principle when it held that in certain circumstances a lease created by a mortgagee may be binding on the mortgagor. The circumstances were delineated in the following passage:

"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 *raiyyat* in some cases and a non-occupancy *raiyyat* 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

A *mortgagee from making any settlement of tenants on the land either expressly or by necessary implication.*

(Emphasis added)

B The passage makes it clear that the exception will apply only when the mortgage deed expressly or by necessary implication gives the mortgagee the power to lease. In addition the tenancy should have been created *bona fide* in the course of prudent management under Section 76(a) of the Transfer of Property Act, 1882 and finally, the rights of the tenant must be protected by statute.

C However, *Mahabir Gopes* case has been almost consistently considered by this Court in the long line of decisions noted earlier as being an authority for the proposition that even if there is no term in the mortgage deed authorising the mortgage to induct a tenant, nevertheless the tenant could continue in possession despite redemption by proving (i) that the tenancy was created by the mortgagee as an act of prudent management and (ii) was protected by statute. The exception is sometimes read as being applicable only to agricultural tenancies. Thus in *Asa Ram's* case (*supra*) it was said that *Mahabir Gope* had held: .

E “.....that an agricultural lease created by him (the mortgagee) 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 enter into it in the usual course of management.”

F In fact in *Mahabir Gope*, the right of the agricultural tenant was considered only because it was referable to a statute which specifically protected such right and not because of some inherent difference between an agricultural and an urban tenancy. The matter was clarified in *G. Ponniah v. Nalleyam Perumal Pillai*, AIR (1977) SC 244

G “Our attention has been invited to some cases which relate to the applicability of Section 76 (a) of the Transfer of Property Act. It is true that this provision has been applied to tenancies created under various *statutory provisions* regulating the rights of tenants to agricultural lands in States all over India.”

H The view was reiterated but with some modification in *Pomal v. Vrajlal* (*supra*) where the two limbs of the exception were seen as two separate exceptions.

“.....all the cases that we have so far considered are cases of agricultural lands and in each of these cases the question was examined from two points; first, whether the lease could be said to be a lease granted in the course of prudent management *and, in the alternative*, whether the rights of the tenant inducted by the mortgagee with possession had been enlarged as a result of a special statute dealing with the rights of tenants of agricultural lands.”

(emphasis added)

If the principle, whether as originally enunciated in *Mahabir Gope* or as modified later were to be applied to the case before us, three separate obstacles would have to be overcome by the respondents 1 and 2 before they can succeed in their claim to continue in possession as tenants. The first hurdle that the respondents 1 and 2 would have to overcome would be to establish the consent of the mortgagor to the creation of the tenancy by the mortgagee. In fact it was never the case of the respondents that the tenancy was created by the mortgagee in terms of the mortgage deed.

The second hurdle would be to prove the ingredients of Section 76(a) which provides: that a mortgagee must manage the property as a person of ordinary prudence would manage it if it were his own. As said in *Asa Ram* (supra) “this being in the nature of an exception, it is for the person who claims the benefit thereof, to strictly establish it”. The respondents 1 and 2 have singularly failed to do this. Though an argument was raised before the Trial Court that the lease created by Labhu Ram in favour of Bir Singh was binding on the mortgagor under Section 76 (a) of the Act, the argument was specifically negated by the Trial Court and affirmed on appeal. No submission was made to us on behalf of the respondents Nos. 1 and 2 on the basis of Section 76(a).

The third hurdle is to prove statutory protection. The respondents Nos. 1 and 2’s claim to continue in occupation as tenants despite the redemption of the mortgage is sought to be derived from Sections 18 and 8-B of the Pepsu Tenancy and Agricultural Lands Act, 1955 (referred to as the 1955 Act).

Section 18 of the 1955 Act provides for the devolution of the tenancy at the first instance on the deceased tenants lineal male descendants, in the male line of descent. Therefore, it is claimed that the respondents No. 1 and 2 inherited the tenancy right of Bir Singh.

A Section 8B provides:

"8B. Certain mortgagees to be deemed as tenants under the Act: -

B (1) Where, after the commencement of the Presidents Act, land comprising the tenancy of a tenant is mortgaged to him with possession by the landowner any such land is subsequently redeemed by the landowner, the tenant shall, notwithstanding such redemption or any other law for the time being in force, be deemed to be the tenant or the landowner in respect of such land on the same terms and conditions on which it was held by him immediately before the execution of the mortgage had never been executed.

C (2) Where a tenant referred to in sub-section (1) has been dispossessed by the landowner in execution of a decree or order of redemption, he shall be entitled to be restored to his tenancy in the manner prescribed on the same terms and conditions on which it was held by him immediately before the execution of the mortgage on an application made by him to an Assistant Collector of the first grade having jurisdiction within a period of one year from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance, 1958.

D (3) An application received under sub- section (2) shall be disposed of by the Assistant Collector of the first grade in the manner laid down in sub-section (3) of section 8A."

E This section is for the benefit of a tenant to whom the subject matter of the tenancy may be subsequently mortgaged. It cannot apply in this case because there is no subsisting tenancy. In upholding the respondents Nos. F 1 and 2's right under the Section the High Court appears to have lost sight of the fact that the tenancy of Bir Singh had been created by Labhu Ram. After Labhu Ram's death, his son Satpal, became the landlord. When Satpal transferred all his rights vis-a-vis the land to the respondents 1 and 2, the Respondents 1 and 2 became the landlords and Bir Singh in effect became G a tenant under them. Therefore, when Bir Singh died in 1971, his tenancy rights could not be inherited by his sons for the simple reason that they were his landlords and could not, as observed by the Trial Court, become their own tenants. When a landlord transfers his rights in the leased property to his tenant there would be a merger of the rights of the tenant in his higher rights as owner and the tenancy would come to an end under Section 111(d) of the H Transfer of Property Act.