

A ALL INDIA FILM CORPORATION LTD. & ORS.

v.

SHRI RAJA GYAN NATH AND ORS.

September 26, 1969

B [M. Hidayatullah, C.J. AND A. N. GROVER, J.]

Mortgage—Tenancy created by mortgagee in possession does not survive the termination of mortgage interest—Landlord and tenant—East Punjab Urban Rent Restriction Act, 1949, applicability of—Evacuee Interest (Separation) Act, 1951.

C The mortgagee of a property in which a cinema was run, leased it to the first appellant on a monthly rental of Rs. 250/- for a period of 5 years renewable for 10 years by yearly renewals on the same terms. The lessee was given the full right to use the property whether by itself or through agents or in partnership or by sub-leasing. The lessee sublet the premises after equipping the house with cinema machinery on a monthly rental of Rs. 1,250/-. The property had been declared evacuee property, and the lessee applied under the Evacuee Interest (Separation) Act, 1951 for separation of his interest. The Competent Officer ordered sale of the property, which was purchased for Rs. 65,000/- by the respondent. There (before the expiry of the term of the lease) the respondent filed a suit against the head-lessee and the sub-lessee for possession of the property. On the questions (i) whether the respondent was entitled to possession before the expiry of the full term of the lease; and (ii) whether the sub-leases were protected under the East Punjab Urban Rent Restriction Act, 1949.

E HELD : (i) 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 coterminous with his mortgage interest. 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. [584 F]

G The exception to the above propositions is the one 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 base will continue to bind the mortgagor or persons deriving interest from him if the mortgagor had concurred to grant it. [585 C]

The present case was not covered by the exception because such a long lease on a small rent could not be said to be an act of prudence, whether it was a *bona fide* act or not, and whether the exemption can apply to urban property. A

Mahabir Gope and Ors. v. Harbans Narain Singh, [1952] S.C.R. 775 and *Asaram & Ors. v. Mst. Ram Kali*, [1958] S.C.R. 986, followed.

(ii) A landlord means a person entitled to receive rent and a tenant means any person by whom or on whose account rent is payable. These definitions apply if the tenancy, either real or statutory, could be said to survive after the termination of the mortgage. The scheme of s. 10 of the Evacuee Interest (Separation) Act, 1951 is that in the case of a mortgagor or a mortgagee, (a) the Competent Officer may pay to the Custodian or the claimant the amount payable under the mortgage debt and redeem the property or (b) the Competent Officer may sell the mortgaged property for satisfaction of the mortgage debt and distribute the sale proceeds thereof, or (c) the Competent Officer may partition the property between the mortgagor and the mortgagee proportionate to their shares, or (d) adopt a combination of any of these measures. It is obvious that method (b) was followed. The property was sold and the mortgage was satisfied. This led to the extinction of the mortgagee's interest and the purchaser acquired full title to the property. 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. [586 E] B

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2416 and 2417 of 1966. C

Appeals from the judgment and order dated March 19, 1963 of the Punjab High Court in Regular First Appeal No. 281 of 1960. D

Rameshwar Nath and *Mahinder Narain*, for the appellants (in C.A. No. 2416/1966) and Respondents Nos. 1, 2 and 4 (in C.A. No. 2417 of 1966). E

N. C. Chatterjee and *H. P. Wanchoo*, for the respondent No. 1 (in C.A. No. 2416 of 1966) and the appellant (in C.A. No. 2417 of 1966). F

The Judgment of the Court was delivered by G

Hidayatullah, C.J. These are appeals by certificate granted by the Punjab High Court against the judgment and decree dated March 19, 1963. The property in dispute is a building in Julundur City in which there is located a cinema. It was formerly called 'Chitra Talkies' and now is known as 'Odeon Cinema'. The building was constructed in 1933 on land measuring 3 kanals and 17 marlas. The original owner—one Azim Baksh—migrated to H

- A** Pakistan in 1947 and this property was declared evacuee property. Before migration Azim Baksh had dealt with this property in several ways. On January 21, 1946 he had mortgaged the building with possession for Rs. 70,000/- with Malawa Ram and Gainda Mal. On January 22, 1946 Azim Baksh took the building on lease on a rent of Rs. 162.8 annas for 11 months from the mortgagees. He executed a rent note. On February 8, 1946 this rent note was cancelled. An endorsement was made on the rent note to the following effect :

- C** "With the consent of Lal Gainda Ram and Malawa Ram, the said rent-deed has been cancelled. Rent for one month may be included in the mortgage amount. The mortgagees are entitled to carry on the aforesaid cinema in any way they like or may give the same on lease to any body else. I shall have no objection".

- D** Previously Azim Baksh had rented this building to Sant Ram and Sita Ram on Rs. 150/- per month. After the release of the property the mortgagees leased it to Sita Ram and Sohan Lal on Rs. 200/- per month. This lease was terminated on July 26, 1950. On August, 1951 the mortgagees leased it to the All India Film Corporation Ltd., appellant No. 1 (defendant No. 2), on Rs. 250/- per month *vide* Ex. D.2 W.2/1. The lease was for 5 years in the first instance from September 15, 1951 to September 14, 1956. It was, however, renewable for 10 years by yearly renewals. There was a condition that renewal on the same terms was not to be refused. By this lease, the lessee was given full right to use the property whether by itself or through agents or in partnership or by sub-leasing.

- F** Malawa Ram and Gainda Mal partitioned their property and this house fell to the share of Gainda Mal. The lessee company in its turn sub-let the premises to defendants 3 to 9 on a monthly rent of Rs. 1,250/-. This was on May 16, 1952. Before sub-leasing the premises, the head lessee company had equipped the house with cinema machinery etc. and the sub-lease included the use of machinery etc.

- G** Gainda Mal applied under Evacuee Interest Separation Act, 1951 for separation of his interest. The Competent Officer by his order, August 25, 1955, determined the mortgage charge as Rs. 90,807.4 annas and ordered sale of the building and land together with another plot. The respondent in this appeal Raja Gyan Nath purchased the cinema with the land (3 kanals 17 marlas) for Rs. 65,000/- on December 3, 1955. The sale certificate was issued on March 3, 1956. The mortgage charge was paid off on April 19, 1958.

The purchaser Raja Gyan Nath then filed a suit for possession of this property from the head lessee and the sub-lessees on August 5, 1959 and for mesne profits at the rate of Rs. 1,250/- per month. The sub-lessees claimed the benefit of the East Punjab Urban Rent Restriction Act (3 of 1949). Later the plaintiff gave up his claim to the cinema machinery, furniture and fittings. The trial Judge decreed the claim in full except that mesne profits were reduced to Rs. 500/- per month and half of the costs were disallowed. Defendants 2, 4, 10 and 11 appealed against the decree to the High Court. The plaintiff cross-objected asking for mesne profits at Rs. 1,250/- with interest at 6% per year and the remaining costs. The High Court affirmed the decree, but reduced mesne profits further from Rs. 500/- to Rs. 250/- per month. The mesne profits were to run from the date of suit till possession with interest at 6% per annum. The High Court granted a certificate to both sides and they have filed their respective appeals.

In the High Court only three points were urged :

(1) Whether the defendants were protected by the East Punjab Urban Rent Restriction Act (3 of 1949) ?

(2) What were the mesne profits ? and

(3) Whether plaintiff was entitled to possession before the expiry of the full term of the lease with right to renewals ?

These are the only points which have been urged before us in these appeals.

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 coterminous 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

- A 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.
- B These propositions are well-understood and find support in two rulings of this Court in *Mahabir Gope and others v. Harbans Narain Singh*⁽¹⁾ and *Asaram and others v. Mst. Ram Kali*⁽²⁾.

- C 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.
- D 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.
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- F Applying these principles to the facts of this case, we find that the property, the subject of the lease, was a house in the city of Jullundur suitable for a cinema theatre. This was leased for five years on a rent of Rs. 250/- p.m. This sum included the use of a passage for which the rent was Rs. 100/- p.m. In effect the rent of the building was Rs. 150/-. This was lower rent than the rent it had fetched before. The mortgagee further agreed to renewal of the lease on the same terms for a further period of 10 years. It is in evidence that a plot only 8 marlas formed the passage and the rent was Rs. 100/- and on that basis land of 3 kanals and 17 marlas with a building fit for cinema ought to have fetched much more. Such a building in a growing city ought not to have been tied down for a period of fifteen years, to a rent of Rs. 150/- or even Rs. 250/- p.m. The learned subordinate Judge pointed out that the annual rent of the building was assessed at Rs. 10,800/- for the years 1950—55. This shows how low was the actual rent. The history of the building in the hands of the head lessee shows that after an investment of Rs. 60,000/- the rent went upto Rs. 1,250 p.m. with additional rights
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(1) [1952] S.C.R. 775.

(2) [1958] S.C.R. 986.

to the head lessee. The building without the fittings and the land of the passage fetched Rs. 65,000/-. Therefore a tenant willing to pay a better rent could easily have been found. The case is thus not covered by the exception because we cannot hold that such a long lease on such a small rent was an act of prudence, whether it was a *bona fide* act or not, and whether the exception can apply to urban property.

This brings us to the next question. It is whether the tenants could take advantage of the provisions of the East Punjab Urban Rent Restriction Act, 1949? The answer to this question depends on whether we can say that there was a tenancy to protect. We have shown above that the lease came to an end with the mortgagee's interest in the property. Although this was not a case of a redemption plain and simple because a straight redemption was refused, the property was put to sale and the purchaser paid off the mortgage in full. The interests of the mortgagor and mortgagee united in the person of the purchaser and the mortgage ceased to subsist. In this view of the matter the purchaser, speaking in his character as a mortgagor, could claim that the mortgagee's action came to an end and there did not subsist any relationship between him and the tenants.

The respondents attempted to argue that the Rent Restriction Act defines landlord and tenant with reference to the payment of rent. A landlord means a person entitled to receive rent and a tenant means any person by whom or on whose account rent is payable. These definitions apply if the tenancy, either real or statutory, could be said to survive after the termination of the mortgage. The scheme of s. 10 of the Evacuee Interest (Separation) Act, 1951 is that in the case of a mortgagor or a mortgagee, (a) the Competent Officer may pay to the Custodian or the claimant the amount payable under the mortgage debt and redeem the property, or (b) the Competent Officer may sell the mortgaged property for satisfaction of the mortgage debt and distribute the sale proceeds thereof, or (c) the Competent Officer may partition the property between the mortgagor and the mortgagee proportionate to their shares, or (d) adopt a combination of any of these measures. It is obvious that method (b) was followed. The property was sold and the mortgage was satisfied. This led to the extinction of the mortgagees' interest and the purchaser acquired full title to the property. 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 autho-

A rised 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 below cannot be said to be erroneous.

B There remains to consider the question of mesne profits. The High Court reduced the mesne profits to Rs. 250/- p.m. which was the actual rent paid for the building and the passage. There is some doubt as to whether this sum included Rs. 100/- for the use of the passage. However, we think that the matter is between the purchaser and the head lessee. The rent of Rs. 250/-, although on a low side, was the actual rent on which the premises were held. The High Court was, therefore, not wrong in limiting mesne profits to that figure.

C The result is that both the appeals fail and will be dismissed with costs. There will be a right to set off the costs and the resulting difference alone will be payable.

Y.P.

Appeals dismissed.