

A **RAJ NARAIN PANDEY & ORS.**

v.

SANT PRASAD TEWARI & ORS.

October 31, 1972

B [H. R. KHANNA, Y. V. CHANDRACHUD AND C. A.
 VAIDIALINGAM, JJ.]

*U.P. Tenancy Act (17 of 1939) ss. 33, 44, 45, 82 and 180—Scope of
Stare Decisis—Application by Supreme Court with respect to decisions
of High Court interpreting local Statutes.*

C In interpreting ss. 33, 44, 45, 82 and 180 of the U.P. Tenancy Act,
1939, the High Court, in two Full Bench decisions, namely *Chassu v. Babu Ram* [A.I.R. (31) 1944, Allahabad 25] *Mahabat Singh v. Ram Raj* (A.I.R. (37) 1950 Allahabad 604), held :

D (1) That the usufructuary mortgage of an occupancy holding by a ten-
ant is void and not voidable; (2) that a mortgagor after giving possession
to the mortgagee cannot recover possession of the holding without pay-
ing the money which he had taken from the mortgagee; (3) that a mort-
gagor of an occupancy holding by remaining in possession for over 12
year does not extinguish the rights of the mortgagor to redeem him and
by such possession the mortgagee only prescribes for mortgagee rights; (4)
that it is open to the mortgagor to seek possession of the holding by
tendering the consideration which he had received and he may do so by a
redemption suit; (5) that the relationship which comes into existence as
a result of the mortgage of an occupancy holding and its possession being
transferred to the mortgagee, is analogous to that of a mortgagor and
E mortgagee and the action to recover possession is analogous to redemption
and (6) such a suit is maintainable suit in a civil court.

F In the present case, the occupancy tenant of the land in dispute exe-
cuted a mortgage deed in respect of the land in favour of the appellants
and put them in possession. Respondents 1 to 6 were subsequently
accepted as the occupancy tenants by the landlords in place of the previous
occupancy tenant and have also been declared to be the Bhumidars of the
land. Respondents 1 to 6 filed a suit for possession of the land, after
depositing the mortgage money in court.

The suit was decreed in appeal, by the High Court, following the ear-
lier Full Bench decisions.

Dismissing the appeal to this Court,

G HELD : (1) in the matter of the interpretation of a local statute, the
view taken by the High Court over a number of years should normally
be adhered to and not disturbed. A different view would not only intro-
duce an element of uncertainty and confusion, it would also have the effect
of unsettling transactions which might have been entered into on the
faith of those decisions. The doctrine of *stare decisis* can be aptly in-
voked in such a situation by a superior court not strictly bound by the
decision. [840 B-E]

H *Brownsaa Haven Properties v. Poole Corpn.* [1958] Ch. 574 (C.A.)
referred to.

(2) The status of the appellants was analogous to that of the mort-
gagees and the successor of the original mortgagor would be entitled to
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recover possession of the land on payment of the mortgage money. As respondents 1 to 6 were the occupancy tenants of the land and as they were declared to be the Bhumidars, they had sufficient interest in the land, to institute the suit under s.91 (a) of the Transfer of Property Act, 1882. [841 A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1308 of 1967.

Appeal by special leave from the judgment and decree dated December 7, 1966 of the Allahabad High Court in Appeal No. 5252 of 1960.

C. B. Agarwal and *K. P. Gupta*, for the appellant.

G. N. Dikshit and *S. K. Bisaria*, for the respondents.

The Judgment of the Court was delivered by

KHANNA, J. This appeal by special leave is directed against the judgment of Allahabad High Court whereby that Court reversed the decisions of the trial Court and the first appellate court and awarded a decree for the possession of the land in dispute in favour of the plaintiff-respondents against the defendant-appellants. The appellants were further held to be entitled to withdraw the mortgage amount which had been deposited by the respondents.

On January 16, 1923 Ganga Prasad Rai, father of Lachhman Singh plaintiff-respondent No. 7, executed a mortgage deed in respect of land in dispute for Rs. 600 in favour of Ram Cheej Pandey and put him in possession thereof as a mortgagee. Ram Cheej Pandey, who was impleaded as defendant No. 1 in the suit, is now dead and the appellants, who too were impleaded as defendants, are his legal representatives. Ganga Prasad Rai at the time of the mortgage was the occupancy tenant of the land in dispute. On January 6, 1955 plaintiff-respondents No. 1 to 6 along with Lachhman Singh plaintiff No. 7 filed the present suit for possession of the land in dispute against Ram Cheej Pandey and others on the allegation that Lachhman Singh had transferred all his rights in the land with the consent and permission of the Zamindar (the land-lord) in favour of plaintiffs 1 to 6. It was stated that, as a result of the said transfer, plaintiffs 1 to 6 had become the occupancy tenants of the land in dispute. The plaintiffs 1 to 6 also claimed to have acquired Bhumidari rights of the land by depositing ten times the amount of the land revenue. According to the plaintiffs, they had a right to redeem the land from the mortgagee, but as the mortgagee was not prepared to give back the land on receipt of the mortgage money, the plaintiffs were depositing the amount in court. It was also added that plaintiff No. 7 had been joined as a co-plaintiff with plaintiffs 1 to 6 to avoid any dispute. Raj Narain Pandey, son of Ram Cheej

A Pandey, as well as two minor sons of Raj Narain were impleaded as defendants on the ground that the four defendants were members of the joint Hindu family and, as such, were in possession of the land in suit.

B The suit was contested by Raj Narain Pandey. Raj Narain Pandey admitted the mortgage alleged by the plaintiffs. It was, however, averred that plaintiffs 1 to 6 had no right to redeem the land. The plaintiffs suit was further stated to be barred by limitation as, according to the written statement, the defendants were in adverse possession of the land for more than 12 years.

C The trial court found that the plaintiffs suit was not barred by time. The plaintiffs were, however, held to have no right to sue. In the result, the suit was dismissed. On appeal, learned Additional Civil Judge Ballia held that plaintiffs 1 to 6 were not the successors of plaintiff No. 7. It was further observed that the defendants, after the mortgage, had become trespassers in the land and the suit against them was barred by time. When the matter was taken up in second appeal before the High Court, the learned Judge D held that in 1946 plaintiffs 1 to 6 had acquired, as a result of agreement with the Zamindar, the same rights which had vested in plaintiff No. 7 before he surrendered those rights. The learned Judge further referred to two Full Bench decisions of Allahabad High Court, namely, *Ghassu and Anr. v. Babu Ram and Anr.*⁽¹⁾ and *Mahabal Singh and Anr. v. Ram Raj and Ors.*⁽²⁾ and in the light of those decisions, held that mortgagee of an occupancy holding by remaining in possession for over 12 years did not extinguish the right of the mortgagor to redeem him and by such possession the mortgagee only prescribed for mortgagee rights. It was further held that the plaintiffs were entitled to redeem the mortgage and recover possession of the land and that the suit of the plaintiffs was not barred by time. In the result, the plaintiffs appeal was F accepted, the decisions of the courts below were set aside, and a decree for possession of the land in dispute was awarded in the plaintiffs favour. The defendants were held entitled to withdraw the mortgage amount already deposited by the plaintiffs.

G Mr. Agarwal in appeal before us has submitted on behalf of the defendant-appellants that plaintiff-respondents 1 to 6 were not entitled to sue for possession of land on payment of the mortgage money and that their suit was barred by limitation. The above submissions have been controverted by Mr. Dikshit on behalf of the plaintiff-respondents, and he has canvassed for the correctness of the view taken by the High Court.

H Before dealing further with the matter, we may refer to some of the statutory provisions which have been referred to by Mr. Agarwal. Sub-section (1) of section 33 of the U.P. Tenancy Act,

(1) A.I.R. (31) 1944 Allahabad 25.

(2) A.I.R. (37) 1950 Allahabad 604.

1939 (U.P. Act No. 17 of 1939) (hereinafter referred to as the Act of 1939) provides, *inter alia*, that the interest of an occupancy tenant is not transferable, otherwise than in accordance with the provisions of the Act. According to sub-section (1) of section 44 of that Act, every transfer, other than a sub-lease, made by a tenant in contravention of the provisions of this Act, shall be void. Section 45 of the above mentioned Act deals with the extinction of tenancy, and according to clause (c) of the section, the interest of a tenant shall be extinguished subject to the provisions of sections 82 to 88 by surrender. Surrender by a tenant is dealt with in section 62 of the Act. It is provided in the section that a tenant not bound by lease or other agreement for a fixed term to continue to occupy the land, may at the end of any agricultural year surrender his holding, by sending a registered notice to his landholder intimating his intention to do so and by giving up possession thereof whether such holding is or is not sub-let or mortgaged. Further conditions are also prescribed in that section, but we are not concerned with them. Section 180 of the above mentioned Act provides for ejectment of person occupying land without consent. According to this section, a person taking or retaining possession of a plot of land without the consent of the person entitled to admit him to occupy such plot and otherwise than in accordance with the provisions of the law for the time being in force, shall be liable to ejectment under this section on the suit of the person so entitled and also to pay damages which may extend to four times the annual rental value calculated in accordance with the sanctioned rates applicable to hereditary tenants. The Fourth Schedule to the Act deals with suits triable by Revenue Courts and prescribes the period of limitation for such suits. Sub-clause (b) of clause 2 of item No. 18 of Group B of the said Schedule prescribes a period of two years for filing the suit under section 180 of the Act "from the 1st July following the date of the commencement of this Act, whichever is later".

Reference has also been made by Mr. Agarwal to the following passage in the judgment of the High Court :

"At the same time, it is equally clear that the rights acquired by plaintiffs No. 1 to 6 as a result of the contract of tenancy entered into by the Zamindar in their favour in 1946 were the same rights which vested in the 7th plaintiff before surrender and which had passed on to the Zamindar by act of surrender by the 7th plaintiff. At the time of the settlement in 1946 the defendants were in possession under a void usufructuary mortgage. The surrender by the 7th plaintiff preceding the aforesaid settlement could only be a surrender of such rights as the 7th plaintiff still had at that time and, similarly, the settlement in favour of plaintiffs Nos. 1 to

A 6 by the Zamindar could only be settlement of those very rights. What, therefore, has to be considered is what was the nature of the rights which the 7th plaintiff Lachhman Singh retained after executing the void mortgage in 1923 and putting the first defendant in possession."

B It is urged by Mr. Agarwal that though plaintiff No. 7 surrendered his occupancy rights in favour of the landlord, the effect of that was not only the extinction of the occupancy rights but also the extinction of the mortgage in favour of the defendant-appellants. The possession of the land in dispute by the defendant-appellants thereafter was as trespassers. A suit against them, according to C Mr. Agarwal, should have been brought in the Revenue Court by the plaintiff-respondents, in whose favour fresh occupancy rights had been created by the land-lord, within two years under section 180 read with item 18 of Fourth Schedule of Act of 1939. As no suit was brought within the prescribed time against defendant-appellants and as they remained in adverse possession of the land D for a period of more than 12 years, the present suit brought by the plaintiff-respondents, it is submitted, was barred by time.

We are unable to accede to the above contention, because we find that the matter is covered by two Full Bench decisions of the Allahabad High Court. In a five-judge decision of the Allahabad High Court in the case of *Mahabal Singh and Anr. v. Ram Raj and Ors.* (supra), the court referred to the decision of a three-judge bench of that court in the case of *Ghassu and Anr. v. Babu Ram and Anr.* (supra) and found that the following five propositions had been laid down in the earlier case :

F "(1) That the usufructuary mortgage of an occupancy holding by a tenant is void and not voidable.

(2) That a mortgagor after giving possession to the mortgagee cannot recover possession of the holding without paying the money which he had taken from the mortgagee.

G (3) That a mortgagee of an occupancy holding by remaining in possession for over 12 years does not extinguish the rights of the mortgagor to redeem him and by such possession the mortgagee only prescribes for mortgagee rights.

H (4) That it is open to the mortgagor to seek possession of the holding by tendering the consideration which he had received and he may do so by a redemption suit.

- (5) The relationship which comes into existence as a result of the mortgage of an occupancy holding and its possession being transferred to the mortgagee, though not strictly speaking that of a mortgagor and a mortgagee, is analogous to that relationship, and the action which is raised by the mortgagor to recover possession of the holding on payment of the money due to the mortgagee, though not strictly in the nature of a redemption, is analogous to a redemption suit."

It was also observed that to take a contrary view from the law laid down in those five propositions would have the effect of unsettling the law established for a number of years. Mr. Agarwal has not questioned the correctness of the above mentioned five propositions and, in our opinion, rightly so. In the matter of the interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not disturbed. A different view would not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling transactions which might have been entered into on the faith of those decisions. The doctrine of *stare decisis* can be aptly invoked in such a situation. As observed by Lord Evershed M.R. in the case of *Brownsea Haven Properties v. Poole Corpn.*⁽¹⁾, there is well-established authority for the view that a decision of long standing on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior court not strictly bound itself by the decision.

In the light of the above mentioned Full Bench decisions, it cannot be disputed that the status of the defendant-appellants was analogous to that of mortgagees. It also cannot be disputed that the successor of the original mortgagor would be entitled to recover possession of the mortgaged land from the defendant-appellants on payment of the mortgage money. Mr. Agarwal, however, submits that plaintiff-respondents 1 to 6 are not the successors of Lachhman Singh plaintiff No. 7. It is urged that after the surrender of the occupancy rights by Lachhman Singh, the plaintiff-respondents cannot ask for redemption of the mortgage created by Lachhman Singh. This contention, in our opinion, is not well founded. The copy of the compromise decree dated January 4, 1946/February 2, 1945 has been placed on record, and it would appear therefrom that in a suit brought by the plaintiff-respondents 1 to 6 against the landlords and Lachhman Singh (who was described in that suit as Lachhman Rai), the plaintiffs 1 to 6 were accepted to be occupancy tenants of the land in dispute. The

(1) [1958] Ch. 574 (C.A.)

- A effect of that decree was that while the occupancy rights of Lachhman Singh came to an end, those of plaintiff-respondents 1 to 6 came into existence at the same time. As plaintiff-respondents 1 to 6 became the occupancy tenants of the land in dispute, they were, in our opinion, entitled to redeem the land from the mortgagees. The material on record also indicates that plaintiff-respondents 1
- B to 6 have been declared to be the Bhumidars of the land in dispute. Sanad dated October 5, 1949 declaring them to be Bhumidars of the land was issued on October 5, 1949. As plaintiff-respondents 1 to 6 were the occupancy tenants of the land in dispute and as they were declared to be Bhumidars, they had, in our opinion, sufficient interest in the land as clothed them with the
- C right to redeem it from the mortgagees. Clause (a) of section 91 of the Transfer of Property Act provides, *inter alia*, that any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon the property mortgaged or in or upon the right to redeem the same, may institute a suit for redemption of the mortgaged property. The
- D case of the plaintiffs, who were the occupancy tenants and Bhumidars of the land in dispute, is clearly covered by clause (a) of section 91 of the Transfer of Property Act. The fact that the present suit has been filed not by the occupancy tenant who mortgaged the property but by others in whom the occupancy rights were subsequently vested would, in our opinion, make no difference and would be no bar to the maintainability of the suit. It
- E is significant in this context to observe that plaintiffs 1 to 6 became the occupancy tenants of the same land of which Lachhman Singh's father was the occupancy tenant at the time of the mortgage.

- F It has also been argued by Mr. Agarwal that the suit for possession brought by the plaintiff-respondents was not maintainable in a civil court and could only be tried by a revenue court. Apart from the fact that no such plea was taken in the written statement or in the trial court or the first appellate court, we find that the five-judge bench of the Allahabad High Court in the case of *Mahabal Singh and Anr.* (*supra*) has held that such a suit is maintainable in a civil court. We see no cogent ground to disturb that view.
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The appeal fails and is dismissed with costs.

V.P.S.

Appeal dismissed.