

A

A. ARUMUGAM CHETTIYAR

v.

SMT. LOKANAYAKAMMA AND ANR.

FEBRUARY 13, 1996

B

[KULDIP SINGH AND S. SAGHIR AHMAD, JJ.]

*Transfer of Property Act, 1882 :*

C

*Mortgage—Implied surrender of right in the house as a tenant—Terms of mortgage deed conclusive on surrender of tenant's rights—Concurrent findings of fact—Not interfered with.*

D

*Shah Mathuradas Maganlal & Co. v. Nagappa Shankarappā Malaga & Ors, AIR (1976) 1565; Gambangi Appalaswamy Naidu & Ors. v. Bhra Venkataramanayya Patra, AIR (1984) SC 1728; Nand Lal & Ors. v. Sukh Dev & Anr., [1987] Supp. SCC 87 and Nemichand v. Onkar Lal, AIR (1991) SC 2046, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 146 of 1995.

E

From the Judgment and Order dated 14.2.94 of the Karnataka High Court R.F.A. No. 20 of 1988.

P.P. Singh for the Appellant.

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P.R. Ramasesh for the Respondents.

The following order of the Court was delivered :

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The appellant was put in possession of the house in dispute as a tenant in the year 1971. The landlord mortgaged the house with the tenant by a deed dated April 28, 1977. The question before the High Court was whether the mortgage - deed resulted in an implied surrender of the appellant's right in the house as a tenant. The trial Court and the High Court have concurrently found that the terms of the mortgage-deed conclusively show that there was implied surrender of the tenant's rights. On the said findings the Courts below have directed the eviction of the

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appellant.

It is not necessary for us to go into the question in detail as the principles have been authoritatively settled by this Court in *Shah Mathuradas Maganlal & Co. v. Nagappa Shankarappa Malaga & Ors.*, AIR (1976) 1565, *Gambangi Appalaswamy Naidu & Ors. v. Bhra Venkataramanayya Patra*, AIR (1984) SC 1728, *Nand Lal & Ors. v. Sukh Dev & Anr.*, [1987] Supp. SCC 87 and in *NemiChand v. Onkar Lal*, AIR (1991) SC 2046. The High Court on the basis of the law laid down by this Court in the above mentioned judgments has come to the conclusion that the deed of mortgage in the present case indicates that there was surrender of tenancy and the appellant was only a mortgagee. We do not see any ground to interfere with the concurrent findings reached by the Courts below.

The Appeal is dismissed. No. costs.

G.N.

Appeal dismissed.