

POLAMMARASETTI VARANA VENKA SATYANARAYANA

A

v.

SUDDHA APPARAO NAIDU (DEAD) AND ORS

MARCH 18, 1997

[G.N. RAY AND G.T. NANAVATI, JJ.]

B

*Mortgage :*

*Usufructuary mortgage—Suit for redemption—Rights of lessee—Lessee contending that he had acquired non-evictable right and could not be disposed by redemption of mortgage—Held, the finding of the courts below that the lease hold interest had come to an end and the plaintiff was entitled to redemption of the mortgage and to take possession of properties under the mortgage deed cannot be held to be unjust or improper.*

C

*Gopalan Krishnakutty v. Kunjamma Pillai Sarojini Amma & Ors., [1996] 3 SCC 424; Narayan Vishnu Hendre v. Babuao Savalaram Kohawale, [1995] 6 SCC 608; Gambangi Agglaswamy Naidu v. Behara Venkataramanayya Fatro, [1984] 4 SCC 382 and Shah Mathuradas Madanlal & Co. v. Nayappa Shankarappa Malave, [1976] 3 SCC 660, cited.*

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1738 of 1987.

E

From the Judgment and Order dated 16.4.87 of the Andhra Pradesh High Court in S.A. No. 308 of 1981.

K. Ram Kumar, C. Balasubramaniam, Y. Subba Rao and Ms. Asha Nair for the Appellant.

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T.L. Vishwanatha Iyer and M.K.D. Namboodri for the Respondents.

The following Order of the Court was delivered :

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This appeal is directed against the judgment of the Andhra Pradesh High Court dated April 16, 1987, passed in Second Appeal No. 308 of 1981. By the impugned judgment, the High Court has dismissed the Second Appeal preferred by the appellant. One Bheemarasetti Adinarayana Naidu was the plaintiff in Suit No. O.S. No. 55 of 1967 in the Court of District

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A Munsif, Anakaballi which was renumbered as OS No. 260 of 1969 in the Court of Principal District Munsif, Yellamanchili. Such suit was instituted by the plaintiff for redemption of usufructuary mortgage created by deed dated December 11, 1946 (Ext. A-1) on the basis of the sale deed dated September 19, 1960 (Ext. A-2) under which the said plaintiff purchased the property with a right to redeem. The appellant was the second defendant in the said suit. There is no dispute that at the time as creating such usufructuary mortgage in 1946, the appellant was continuing as a lessee and the lease was to expire in 1948. The appellant contended that his right as lessee continued despite the said usufructuary mortgage and in view of such right continuing, he had acquired non-evictable right and, therefore, there was no question of taking over possession of the property from him by redemption of mortgage. Such contention has not been accepted either by the court below or by the High Court.

D Mr. K. Ram Kumar, learned counsel appearing for the appellant has contended that simply on execution of usufructuary mortgage, the right of the lessee does not come to an end unless and until it can be established that such lease hold interest had been terminated or the lease hold interest had been surrendered either by express conduct of the parties or by necessary implication flowing from the deed of mortgage. Save as aforesaid, it must be held that the lease hold interest continues notwithstanding creation of usufructuary mortgage. In support of such contention, reliance has been made to the decision of this Court in *Gopalan Krishnakutty v. Kunjamma Pillai Sarojini Amma & Ors.*, [1996] 3 SCC 424. After taking into consideration of the decisions of this Court in *Narayan Vishnu Hendre v. Babuao Savalaram Kohawale*, [1995] 6 SCC 608 and in *Gambangi Applaswamy Naidu v. Vankataramanavya Fatro*, [1984] 4 SCC 382 and in *Shah Mathuradas Madanlal & Co. v. Nayappa Shankarappa Malave*, [1976] 3 SCC 660 it has been held in *Gopalan Krishnakutty's* case that simply on the execution of the usufructuary mortgage deed, surrender of tenancy right cannot be inferred out the question of continuance of lease hold interest upon execution of usufructuary mortgage is required to be decided on the facts situation of the case.

H Mr. Ram Kumar has submitted that there is no automatic merger of interest of the lessee with that of the mortgagee and in the absence of proof of surrender by the defendant of this lease hold interest and to hold only the right of mortgage, the plaintiff is not entitled to automatically claim

possession of the lease hold premises by redeeming the mortgage.

We have taken into consideration the mortgage deed executed in 1946. In our view, a clear intention of only retaining the mortgage's interest is to be inferred in view of the specific statement that on redemption, the mortgagee should deliver possession to the mortgagor. We may indicate that the expression to that effect used in the mortgage deed has been noted by the courts below. We may also indicate that there is no indication in the mortgage deed as to how the rent payable by the mortgagee *qua lessee* was to be adjusted between the parties. The absence of any mode of adjustment of lease hold rent implies that it was not intended that despite the said mortgage, parties intended that the lease hold interest was to continue. It may also be indicated here that lease hold interest was to expire in 1948. In the absence of any payment of rent for such lease hold interest and acceptance of such payment after expiring of the period of lease it can not also be contended and that there was a case of holding over by the lessee. In the aforesaid circumstances, the finding by the Courts below that the lease hold interest has come to an end and the plaintiff was entitled to the redemption of the mortgage and to take delivery of the properties under these mortgage deed cannot be held to be unjust or improper. We, therefore, do not find any reason to interfere with the impugned judgment of the High Court. The appeal, therefore, fails and is dismissed. No costs.

R.P.

Appeal dismissed.