

Jadavji Purshottam vs Dhama Navnitbhai Amaratlal & Ors. (1987 AIR 2146)

Swetha B

Abstract: *This is a case that handles about an issue between mortgagor, mortgagee and a tenant. This case deals with section 76 & section 98 of Transfer of property Act.*

Keywords: Mortgagor, Mortgagee, Transfer of Property Act, Mortgaged Property

1. Facts

¹The respondent mortgaged a house to a business firm with an ID possession. The ground floor of the property was in occupation by a tenant and so the mortgagors endorsed the rent deed to the mortgagee for the remaining period of lease. Clauses of mortgage agreement gave an option to the mortgagee to give the property to rent or to keep under his possession until the debt is filled or to redeem the mortgage at anytime and stated also that as soon as the redemption is complete, the mortgagee should return the document to the title and re-deliver the property. When the existing tenant vacated after the end of lease period, the mortgagee inducted appellant as a tenant. The ejectment proceedings initiated by the mortgagee against the tenant-appellant were pending when the mortgage was discharged in terms of compromise which stated that the ground floor of the house had been given on rent to the appellant that the ground floor can't be delivered to the mortgagor and the mortgagor was entitled to obtain the vacant ground floor. In the execution proceedings done by the mortgagor, the court held that they were entitled to get only symbolic delivery of the property and not the physical possession of the leased property. The High Court held that as it was an anomalous mortgage, the rights of the mortgagee should be in reference to the terms of the mortgage deed. The mortgage deed permitted the mortgagor to grant lease or rent the property but the permission did not exceed beyond the terms of mortgage deed. Thus, the mortgagor should deliver the mortgage deed whenever the mortgage was redeemed. Thus, he ceased to be the lessor and the appellant was bound to surrender the possession and he doesn't have the right to invoke any other provision to continue his lease and the appellant was not a necessary party to the case as his possession was under the ambit of sub-lessee and the execution application was termed to be maintainable. In the appeal to the Supreme Court², it was contended for the appellant – tenant that his tenancy rights were protected and the mortgagors had an unrestricted power to the mortgagee to create a tenancy for unlimited time period and was bound to accept the transaction even after the redemption of the deed, that his tenancy rights became enlarged. It was also contended that the authority given to the mortgagee to create tenancy, the mortgagor had appointed him as an agent and hence the principles were bound by the acts of the agent.

Issue Raised

- Does mortgagee have right to rent the mortgage property even after the deed is redeemed?
- In this case, should the appellant also be evacuated along with the mortgagee?

Related Provision

- Section 76 of The Transfer of Property Act
- Section 98 of The Transfer of Property Act

2. Explanation of the Provision

Section 76 – Liabilities of mortgagee in possession³

This section lists down the duties of a mortgagee who has the possession of the property which actually belongs to the mortgagor. This section tells that the mortgagee has the responsibility to take the diligent care of the property of the mortgagor but the mortgagor has no obligation to follow the directions of the mortgagee in order to take care of the property but he cannot lease the property or do anything as they wish beyond the termination of his interest in the mortgaged property. The mortgagee has the right to collect the revenue arising out of the property. The mortgagee will also be held liable if he uses the asset and takes the benefits without paying taxes and he has the rights to make necessary repairs only from the surplus amount from the profit and rents of the property. He is prohibited from carrying out acts which may result in destruction of the property or reducing the value of it. If the property is insured and if it meets with an accident when it's under the control of mortgagee, he has the right to claim two-third of its value. He is obliged to keep records of the accounts of incoming arising out of the property and its expenses. This section also provides the manner under which the mortgagee has to apply for rents and profits when the property is mortgaged.

Section 98 – Rights and Liabilities of parties to anomalous mortgages⁴

This section explains that the mortgagee was given rights to sell the property under his possession for the realisation of mortgage debt if the mortgagor defaults in paying the debt. And the rights and liabilities towards it shall be determined as per the agreement entered by the parties as it amounts to be a prominent proof about the mortgage property and the duties bound to it along with the rights and liabilities.

¹ Indian Kannon <<https://indiankanoon.org/doc/1795976/>>

² 1988 SCR (1) 76

³The Transfer of Property Act, 1882

⁴ The Transfer of Property Act, 1882

3. Judgement

In this case the judgement was given that

- If a tenancy was created by the mortgagee in the possession that shall be binding even after the termination of title of mortgagee if the mortgagors had concurred to grant the lease. But in this case, the mortgagors had not empowered the mortgagee to create a tenancy which shall be binding after the redemption to mortgagee. The authorisation given was not unconditional and was absolute. It was circumstance that the mortgagee had to re-deliver the possession. So, the lease granted by the mortgagee could not term beyond the term of mortgagee. This is not a case where the mortgagee put the mortgaged property to appropriate the interest. The mortgagor had agreed to pay interest and it was stated in the agreement that the mortgage deed absolved the mortgagee of any liability for loss of income from the property due to the fall in income rent from the property or due to non – leasing of the property and keeping the house vacant. On these terms, the mortgagee was not under compulsion to lease the property simply because the permission was given him to lease it out. Though he had the permission to lease it or rent it, he should have been aware that if leased out he was in the risk of not being able to deliver it back to the mortgagor when the mortgage was redeemed. In this case, the mortgage was anomalous. The rights of the parties to the mortgage would thus be governed as per the regulations of Section 98 of The Transfer of Property Act which is that determination of rights of parties regarding the mortgage deed. But consequently, in this case, the appellant claims tenancy as a right only against his landlord's vs the mortgagee and not against the mortgagor. As soon as the mortgage is redeemed and the mortgagee's rights are extinguished by the redemption, neither he nor anyone inducted by him will have a right of the possession of the property which was mortgaged.
- When the rights of the tenant were enlarged by the provisions of Tenancy legislation, the tenant was put in possession of the mortgagee. In this case, the appellant's rights as a tenant did not enlarge under the Tenancy Act⁵ legislation as the lease was enacted earlier before the act was introduced at all.
- The relationship between the parties to the mortgage was only in terms of debtor and creditor and there was no question of the mortgagor constituting mortgagee as their agent to the mortgaged property.

Thus, the court finally held that the appellant had no independent rights and it was not necessary for him to be a part to the suit filed by the mortgagor after the redemption of the mortgage. It was that the sub – tenant's rights were co-terminus with the tenant himself. Thus, the mortgagors were entitled to seek ejectment of the mortgagee and the tenant inducted by the mortgagee. Thus, the execution agreement application taken against the was binding on the appellant.

⁵ The Tenancy Act, 1997

4. Case Comment

In this case, the court held that the mortgagee had a duty of take care of the mortgaged property and rent it out as per the provisions stated under section 76 of The Transfer of Property Act but did not have the right on the property after the mortgage was redeemed. Since this was an anomalous mortgage as per section 98 of The Transfer of Property Act, the mortgagor did not have absolute right over the property. So, it was held that the mortgagor had rights to seek evacuation of the mortgagee and the person rented by the mortgagee as the mortgagee overruled his rights which was mentioned in Section 76 of the said act.

