
(1962) 09 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 66 of 1962

Gian Chand
Shamchand

APPELLANT

Vs

Rattan Lal Krishan
Kumar and Others

RESPONDENT

Date of Decision: Sept. 27, 1962

Acts Referred:

- Transfer of Property Act, 1882 - Section 1, 111, 41, 82

Citation: (1963) 2 ILR (P&H) 1

Hon'ble Judges: S.S. Dulat, Acting C.J.; D.K. Mahajan, J

Bench: Division Bench

Advocate: M.L. Sethi, for the Appellant; B.R. Tuli, S.S. Mahajan, Raj Kumar Aggarwal and S.D. Bahri, for the Respondent

Judgement

1. This is an appeal under clause 10 of the Letters Patent and is directed against the decision of the learned Company Judge in L. M. No. 142 of 1961.

2. The facts are simple and there is not much dispute on them. Messrs. Ghunghar Mal Bhutel and Sons were initially the owners of the suit property. They borrowed from the Simla Banking and Industrial Company Limited a sum of Rs. 30,000/- on the 27th September, 1945, and another sum of Rs. 55,000/- on the 3rd of October, 1945. To secure these advances the property in dispute along with certain other properties was equitably mortgaged with the Bank. It may be mentioned that the property in dispute is a shop. Mansa Ram, one of the creditors of Messrs. Ghunghar Mal Bhutel and Sons, obtained a money-decree against the said firm and in execution of that decree put the property in dispute to sale on the 19th May, 1951. On this property Gyan Chand Sham Chand were the tenants put by Messrs Ghunghar Mal Bhutel and. Sons. At the Court auction the property was. purchased by the tenants subject, of course, to the equitable mortgage in favour of the Bank.

Subsequently the Bank went into compulsory winding up and at the instance of the Bank in liquidation a preliminary decree was passed by this Court in its favour on the basis of the equitable-mortgage on the 14th March, 1960; An appeals against this decree under clause 10 of the Letters Patent was dismissed on the 17th, August, 1961. In the meantime on the 5th. of August; 1960, a final decree was passed. In execution of this final decree-the property in dispute was sold on the 13th June, 1961, and was purchased at the Court auction by Rattan Chand Krishan Kumar. This sale was confirmed on the 22nd September, 1961. The auction-purchasers then applied to the learned Company Judge for actual possession of the property. This application was opposed by Gyan Chand Sham-Chand on the ground that they were the tenants on the property and as such could not be evicted from the same. They urged in support of their contention the provisions of the East Punjab Urban Rent Restriction Act. The learned Single Judge, however, negatived their contention on the short ground that their tenancy had by reason of the doctrine of merger come to an end and; therefore," they could not set up their tenancy in defence to the application. The learned Judge solely decided this matter on the assumption that Section 111 of the Transfer of Property Act was applicable. It is against this decision that the present letters Patent Appeal has been preferred.

3. The contention of Mr. Sethi, learned counsel for the appellants, is that the provisions of section. 111 of the Transfer of Property Act are not applicable and the case has to be decided on the general law of merger apart from these provisions. According to the learned counsel, under the general law there is no automatic merger of the lesser and the bigger estate when they vest in the same person. In each case it depends on the intention of the person acquiring the bigger estate either to allow, the smaller estate to vanish or to keep it alive for his benefit. In support of his contention Mr. Sethi relies on a Privy Council decision in AIR 1922 94 (Privy Council) . While dealing with this question, their Lordships of the Privy Council at p. 553 (of Ind Cas): (at p. 95 of AIR) observed as under:

But, if the doctrine of merger is appealed to, that doctrine may be taken as it stands. Merger is not a thing which occurs ipso jure upon the acquisition of what, for the sake of a just generalisation, may be called the superior with the inferior right. There may be many reasons - conveyancing reasons, reasons arising out of the object of the acquisition of the one right being merely for a temporary purpose, family reasons and others in the course of which expediency of avoiding the coalescence of interest and preserving the separation of title may be apparent. In short the question to be settled in the application of the doctrine is, was such a coalescence of right meant to be accomplished as to extinguish that separation of title which the records contain. This is in accord with settled law. of which two recent instances may be given, namely, *Capital and Counties Bank v. Rhodes* (1903) 1 Ch. 631 and especially the judgment of Farwell J. in *Ingle v. Vaughan Jenkins* (1900) 2 Ch. 368.

In this case their Lordships repelled the argument based on some analogous provisions relating to mortgage on the basis of which it was sought to be urged that the merger

would be automatic. In our view this decision really concludes the matter. Unfortunately the Privy Council decision was not pointed out to the learned Single Judge.

4. There is another decision of the Calcutta High Court in [Suraj Chandra Mondal Vs. Beharilal Mondal](#), on which reliance was placed before the learned Single Judge. This decision was not followed by the learned Single Judge on the ground that in face of the clear language of Section 111 of the Transfer of Property Act he was not in a position to fall in line with the reasoning in [Suraj Chandra Mondal Vs. Beharilal Mondal](#). As I have already said Section 111 of the Transfer of Property Act has no application to this State. It is significant that the provisions of this section have never been applied as a rule of equity, justice or good conscience by any of the High Courts in the territories to which this provision is not made applicable u/s 1 of the Transfer of Property Act, whereas a number of cases will be found at page 173, note 4, of Chitalcy's Transfer of Property Act, Vol. 1, where principles underlying the provisions of the Transfer of Property Act have been so applied, for instance, principles of Sections 41 and 82 and so on. So far as the decision in [Suraj Chandra Mondal Vs. Beharilal Mondal](#), is concerned that too lends support to the contention of Mr. Sethi, particularly the passage at page 696, which is in the following terms:

If the general principle of merger apart from Section 111(d), Transfer of Property Act, is sought to be applied to the present case other difficulties would arise. It would then be primarily a question of intention and we have no materials to decide that the defendant intended to merge the two interests. A passage in the written statement of the defendant in the mortgage suit, to which our attention was drawn by Mr. Ghose, does not, in my opinion, throw much light on this matter. A man is presumed to intend that which is for his benefit and judged by that test it would obviously be to the advantage of the defendant to keep the two interests separate. His interest as a lessor, is affected by the mortgage and (sic) allows his lessee's interest to be merged in the superior one he would be hit by the mortgage decree and the sale, and his rights would be extinguished. The existence of a mortgage on the superior right when the defendant purchased it, even if it cannot be held to be an intermediate estate which would prevent merger, would, in my opinion, certainly constitute a criterion to determine the intention of the lessee; and the defendant could not have intended a coalescence of the two rights which was manifestly to his prejudice. The contention of Mr. Ghose must therefore fail.

That being so, we are clearly of opinion that the learned Single Judge was in error in deciding the case on the basis of Section 111 of the Transfer of Property Act.

5. Faced with this difficulty, Mr. Tuli, learned counsel for the respondents sought to urge that what was sold to his clients was the right, title and interest of the judgment-debtor and, therefore, necessarily the tenancy rights held by Gyan Chand Sham Chand were also sold. This argument is wholly untenable and loses sight of the fact that what was put to sale was the right, title and interest of the principal debtors and not the right, title and interest of Gian Chand Sham Chand, who held at the relevant time the interest in the

property which they had acquired under the sale from Messrs. Ghunghar Mal Bhutel and Sons and also another interest, that is, that of a tenant from Messrs. Ghunghar Mal Bhutel and Sons. Both these interests are independent of one another and merely because one was sold would not imply that the other was also sold. Therefore this argument is also repelled.

The result therefore would be that in case where merger is pleaded apart from the provisions of Section 111 of the Transfer of Property Act it will have to be determined in each case as to what was the intention of the owner of the bigger estate. Did he intend to keep the smaller estate alive or did he intend at the time when he acquired the bigger estate that the smaller estate should merge and be wiped out. This is a question which the learned Single Judge has not determined and, therefore, in our view it will be proper to allow this appeal, set aside the judgment of the learned Single Judge and remit the case to him for decision as to what was the intention of Gian Chand Sham Chand at the time when they acquired the equity of redemption vis-a-vis their tenancy rights.

The costs would be costs in the cause.

Parties are directed to appear before the learned Single Judge on the 12th October, 1962.