Narayansa Dharamchandsa Vs Laxman Motiram and Another

Court: Bombay High Court (Nagpur Bench)

Date of Decision: March 19, 1975

Acts Referred: Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 â€" Section 6
Transfer of Property Act, 1882 â€" Section 76

Citation: AIR 1976 Bom 61 : (1975) MhLj 503

Hon'ble Judges: Masodkar, J

Bench: Single Bench

Advocate: S.A. Jaiswal, for the Appellant; B.P. Jaiswal and A.M. Bapat, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner Narayansa is the owner of a small field Survey No. 112 area 7 acres area 7-Acres 34 Gunthas of Mouza Tondgaon. By a deed

of mortgage (hereinafter called the deed) of September 24,1957, he purported to take a debt of Rs. 25000/- for himself and his sons Shankarrao

and Digrai who was a minor, and under the terms set out in that document handed over the possession of the said field to the mortgagee Rambhau

s/o bauble Cord now represented by respondent No. 2 Pandering his son.

2. With regard to this property, certain facts are not in disputes. The mortgagee who took possession purported to induct respondent No. 1

Laxman on this land as a tenant since after the year 1958-1959 . The deed of mortgage is a written deed and was duly executed on September

24, 1957. Name of Laxman having appeared in the crop-statements summate proceedings were initiated under the provisions of the Bombay

Tenancy and Agricultural Lands (Vidarbha Region) Act. 1958 (hereinafter also called the 1958 Act) to find out whether the statutory ownership

could be conferred on Laxman. The tenancy authorities relying on the decision of the Supreme court rendered in the case of Dahya Lal and Others

Vs. Rasul Mohammed Abdul Rahim, have concluded the matter against the present petitioner holding that Laxman would be deemed tenant u/s 6

of the 1958 Act and therefore entitled a statutory ownership. These orders are challenged by the present petition.

3. The submission of the petitioner are that under the terms of the deed under which possession of agricultural land was parted, there was express

intention disclosed that mortgagee was not to part with the possession and was required to take the crops himself and was bound to appropriate

the same for a period of three years and thereafter again for a period of two years against the loan advances and was further bound to redeliver the

possession to the mortgagor on redemption. It is urged that the terms of the deed have to be understood in the light of the law that governs the

relationship of mortgagor and mortgagee as well as the implicit consequence available under the provisions of any other law regarding the tenancies

of agricultural lands. It was contended that the property being located in Berar, the relevant law regarding the leases would be initially the Berar

Regulation of Agricultural Leases Act. 1"951 followed by the Ordinance IV of 1957 which was made applicable on Sept. 21. 1957 and thereafter

by the relevant provisions of the Bombay Tenancy and agricultural Lands Act. 1958 which became the law on 31-12-1958. It was pointed out

that by the property shall not be dealt with by the mortgagee in possession in a manner which will make it impossible for the mortgagor to resume

its possession after the redemption of the debt due under the deed. So construed, and on the plain wording of the bond it is contended that the

mortgagee was prohibited either expressly or impliedly from dealing with the property which will destroy the ownership right or , at any rate right

the repossess the property upon redemption and Laxman who was inducted in spite of such prohibition would be a mere trespasser qua the

mortgagor. He could not, therefore, be said to be lawfully cultivating the land nor would be a lawful deemed Tenant"" as contemplated by Dahya

Lal and Others Vs. Rasul Mohammed Abdul Rahim, decided by the Supreme Court. Reliance was also placed on the provisions of Section 76(a)

and Section 76(e) of the T.P. Act. in support of these submissions.

4. As against this, both for the mortgagee and the persons inducted by him, the learned counsel appearing took a stand that Dahya Lal and Others

Vs. Rasul Mohammed Abdul Rahim, decided by the Supreme Court applied to the facts and circumstances of the present case too and hence

Laxman was a ''deemed tenant"" and he would now be the owner under the Act. It was further contended that the construction of the deed would

not show that it was impermissible for the mortgagee to let the land because that would be the adjunct or an incident of the right of a mortgagee in

possession to enjoy the property by letting out the same under valid leases. If the activity was permissible, then Laxman, would be cultivating the

land lawfully and therefore,. a deemed tenant"". It was contended that the Legislation of the present kind regulating the relations of agricultural leases

should be beneficially construed so as to confer the larger rights on the tenants. Son construed, it is implicit that the provisions of Section 76(a) or

Section 76(e) of the T.P. Act would not be a bar at all to the mortgagee to place Laxman in possession. The state of Law relied upon for the

petitioner according to the respondents was of little assistance because here is a mortgagor with open eves hands over the possession of such land

for the enjoyment of the other and in such arrangement it is contended, it is implicit that the lease of the agricultural land was permissive mode of

enjoyment. There is no reason either in principle or policy, according to these submissions to read a prohibition by implication. Logically the

submission proceeds that once it is possible to construe the deed even taking into account the land by mortgagee in possession would be a lawful

activity and Lawman would be in lawful possession of the land and as such , deemed tenant. It would not be, the learned Counsel submits an

imprudent act on the part of the mortgagee to let the land to others and to get satisfied his pecuniary interest arising under the mortgage. it will also

not be a case of destruction of the property in the possession of the mortgagee. If the Legislature thought that the persons lawfully on the land

should be benefited, then it not the function of the Court to interest the provisions of the law which will take away the benefit conferred on the

tenants.

5. Before considering the decision on which respective parties had laid much stress, it is to be observed that from the initial stage of litigation for the

present petitioner, the plea was raised that Laxman could not be deemed to be the tenant as the alleged lease was not at all legal. Laxman was

examined as his own witness. He stated that he had not taken this field from Narayansa and that it was Rambhau who handed over possession to

him in the year 1958-59. he also admitted that the present petitioner Narayansa had three sons. He admitted that he is no claiming any lease from

Narayansa the present petitioner. He admitted that there had been a document of mortgage duly registered and he was present at that time; indeed

he had witnessed it. He tried to deny the condition of the mortgage which was put to him to the effect of Rambhau was to cultivate the filed for five

years and was to return back the filed to the owner after that period. He stated that under the mortgage it was agreed that till the monies were paid

back the cultivation should be of the mortgagee.

6. This amply establishes that Laxman was fully aware of the mortgage and purported to enter upon possession only through the mortgagee. The

deed is duly registered and there in nothing to doubt about the terms under which the possession was handed over for a consideration of a loan of

Rs. 2500/- paid by the mortgagee. The mortgagors are Narayansa and his two sons out of whom one is a minor. Some of the terms of this deed

which has been obviously executed after Ordinance No. IV of 1957 became applicable are to the following effect. The mortgagors have placed

the mortgagee in possession in the consideration described in the deed being Rs. 2500/- The possession to be taken after the standing crops were

taken out on 31-1-1958 . The mortgagee in consideration of the amount paid was to remain in possession for the years 1958-59 1959-60 and

1960-61. In these mortgagee was to take the crops and appropriate the same towards interest. Mortgagee will not be bound to pay any rent or

premium till the amount advanced was repaid and the amount advanced will carry interest thereon. (Emphasis provided).

7. Then follow the recital regarding the usual term that the principal advanced when tendered, the mortgagee was bound to accept. after this there

are the recital to the effect that mortgagee after appropriating the crops for these three years would accept the principal amount if tendered under

the terms of the mortgage. He was not bound to accept the principal amount prior to the period of three years. The mortgage period is indicated

and that is of three years. In case if the principal amount is not paid at the end of these three years, the deed provides, that thereafter a period of

five years would be available to the mortgagors to pay back the amount and according to law the mortgagee would continue to remain in

possession. Then there is a term regarding the foreclosure.

8. The above are the virtual reproductions of the terms between the parties as contained in the deed itself. Firstly, that shows that the mortgagee

who was placed in possession was enable to appropriate the crops for the stated agricultural years of 1958-59 1959-60 and 1960-61 . Ever care

was taken therefore to express the intention that indicates that the mortgagee would cultivate the field and appropriate the produced thereof

towards the satisfaction of the liabilities under the mortgage. That itself postulates -- and this is an important term that the possession will be

cultivating possession of the mortgagee under the deed. In other words the deed being express, unambiguous clear the intention is that the

mortgagee in possession will not part the same in any other right because he is obliged to appropriate the crops and the produce of the land

towards the mortgage liabilities. That obviously cannot be done without cultivating possession remaining with mortgagee. What mortgagors had

done was to give up their right to take the crops for a stated period and instead had conferred that rightly in favour of the mortgagee to take the

crops in lieu of as stated earlier, the interest by obliging themselves not to claim any rent or profit from the mortgagee. This paramount device thus

is a limited transfer of proprietary right to enjoy and appropriate the produce the land the ownership of which remained unaffected in favor of the

mortgagors.

9. However fragile may be the folds of the facile figuration of the term ""intention"" for the purpose of finding the same the language used by the

parties only affords a firm foundation. The same has to be gathered from the terms of the document taken as a whole. Unless there are ambiguities

. It would be impermissible to take aid of any other evidence to find out the intentions of the parties. Here the deed itself appears to be explicit and

clear in that the mortgagee who was enabled to enter in possession and was permitted to appropriate the crops was bound to cultivate the land

and take the produce of cultivation or possession in favour of any one else for that would be acting contrary to express obligation annexed to the

possession of the property. The mortgagee, it is clear, was to enjoy the property so that it is always available for reverting back in real possession

to the mortgagor upon redemption of the debt. It follows that mortgagee was bound by all equitable considerations not to create situation that will

make it impossible for mortgagor to resume it. These express terms and obligations under which possession was handed over in purely a fiduciary

capacity have all the significance because of the process of relevant law applicable to the agricultural land and its leases. By these terms it will be

implied that leases that take away the right to repossess the property or destroy the ownership as permissive by the parties to the deed.

10. As far as Berar i.e. 4 districts of Vidarbha part of Maharashtra is concerned wherein the disputed field is situate by the Berar Regulation of

Agricultural Leases Act, 1951 long term leases were statutorily pre-empted and those were called protected leases. Reference to provisions of

Section 3 of that Act indicates that a lessee inducted on the land, there being no impediment otherwise provided by that Act, would have a lease

extended for a stated period which was initially five years, and then by Amendment increased to seven years. Those leases in explicit terms had to

e from the land-holder which was defined by Section 2(d) of the Leases Act and the protected lease was contemplated by Section 3 of that Act.

Under that Act also the protected leases could not be determined except by the orders of the Revenue Officers as provided for by Sections 8 and

9 of that Act. Apart from the fact that the leases should have been from the land-holders that Act contemplated restrictions on determination of the

leases. By ordinance No. IV of 1957 which became effective on September 21, 1957 i.e. just 3 days prior to the date of the present deed., further

protection to the tenants from eviction of agricultural lands in Vidarbha Region was provided.

11. These provisions statutorily extended the leases and protected the lessee to the detriment of the landlords. Once a valid lease could be

established the landlord was not permitted to enter in possession or determine it at his own will. Mortgagee in possession was not a lessee nor

could claim any extension nor could create any encumbrance that will derogate the rights of his mortgagor or relieve him of the obligations to re

pass the property, as was taken possession of by him. Consistently under mortgages of agricultural lands it was consistent to infer the intention of

the parties that as in the present deed it was the mortgagee who would remain in possession and appropriate the fruits of the cultivation of the field

for the stated three agricultural years here being 1958-59,1959-60,1960-61 and would always be in a position to hand over the possession of the

property to his mortgagors. He could not therefore, part of the possession nor could create leases which will have the effect to do away or finally

extinguish or eclipse the rights reserved by the deed.

12. The Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act 1958 came into force on December 31.1958 and that introduced the

concept of deemed tenancy. By Section 9 that Act declared that tenancy was not determinable by efflux of time. By Section 6 certain persons

were declared to be the deemed tenants of land provided they were lawfully cultivating the land belonging to another. From this category are

explicitly excluded the mortgagees in possession of the land"". In other words even after the coming in force of 1958 Act, the agricultural lands

could remain validly in possession of the mortgagees and such mortgagees were not entitled to claim deemed tenancy in spite of the fact that their

cultivation was lawful. Further , by that Act, valuable rights were conferred on the tenants viz. right of statutory purchase and right of statutory

ownership. Those rights were clearly not available to a person who is in possession under a mortgage being not the tenant of the land. It is now

legal history that Ordinance No. IV of 1957 was the first step taken by the Legislature to eventually pass and apply the provisions of 1958

Tenancy Act. By these dynamic statutory strides those who could answer the definition of the term tenant and were within the legal protection were

firstly protected and their rights in the beneficial sphere of legislation augmented by conferring upon them in statutory right of purchase as well as

ownership. While doing so explicitly those who remained in possession as the creditors and had obtained the possession of agricultural as such

were expressly excluded from any such beneficial considerations.

13. This state of law which was in the offing when the present deed was drafted cannot be said to be a matter of irrelevant consequence. In the

light of the law which would prohibit the owners of the land or the mortgagors to take back the possession. It is perfectly reasonable to read the

term of the deed as expressly enjoining upon the mortgagee to cultivate the land h itself for the stated wears and to appropriate the produce in

satisfaction of the consideration. Readily that intention which protects the respective rights of the parties and avoids frustration of any of these

should be inferred as consistent with the state of law governing in severalty the right of persons that are concerned with land. Otherwise once the

land is mortgaged owner oases it to an unknown and unintended person who might be inducted by an unscrupulous mortgagee under a colour of a

so-called lease . It follows that to achieve such a drastic result the entitlement to create leases that will eventually extinct the right to repossess the

property should be available in unmistaken terms in the deed of mortgage itself. otherwise such an act would be in breach and hence wholly ultra

vires and unauthorized.

14. The juridical concept of the mortgage and the relationship that ensues between mortgagor and mortgagee with regard to the security that may

be place in the hand of the latter would also indicate the same said result. By the provisions of Section 58 of the T.P. Act "" mortgage"" has been

defined as the transfer of an interest in specific immovable property for the purposes of securing the payment of money advanced or to be

advanced by way of loan. It is essentially therefore an arrangement between creditor and debtor under which interest in specific property is

transferred only as a security assuring the repayment of the debt. The nature of the right so transferred always depends on the form of the mortgage

and the terms thereof. While considering the same, the intention of the parties is to be ascertained by reference to substance and essence of the

transaction between them . Notwithstanding the parting of possession and transfer of interest the relational reality that is posited between the

parties is that of debtor and creditor. It is common experience that needs agriculturists enter upon such arrangement by handing over agricultural

arrangements by handing over agricultural lands so as to secure the debts advanced to them. Variety of devices and ingenious instrumentations are

replete in this field. It was necessary therefore to delineate, subject to freedom of agreement available to parties rights and liabilities of those who

take such transfer of interests from their debtors. Under the Provisions of Section 67 to 77 of the T.P. Act hence the rights and liabilities of

mortgagee have been described. All these indicate that those are to be available subject to and in the absence of contract to the contrary. Statutory

obligations thus are indicative of the nature of mortgagee''s status itself which is derivative and secondly is not that of ownership. Amongst others,

the provisions of Section 76 subject the mortgagee in possession to certain statutory liabilities. Firstly and fore mostly he has to be prudent

manager. He is required to manage the property as a person of ordinary prudence would manage as if it were his own and further that he cannot

commit if any act which would be destructive or permanently injurious to the property in his possession. This is obvious for he is duty-bound to

care and obliged "" to render unto him the thing that belongs"" to other . Moreover he cannot pass anything more than he possesses. By or under

mortgage he has entered upon land by way of security and law enjoins him to enjoy the property entrenched by the inbuilt limitation of a trust.

Would it be a prudent for him to lease the same in a way that would not only let the property but to pass the same permanently to someone else

because of law? Would it not be clearly an act that would be destructive of that which is placed in his hands? Answers to these, because of the

land laws must be in affirmative and hence permitting scrutiny of the authority of lease such lands. One is not therefore inclined to sanction reading

of implied term to lease agricultural land as one adjunct of a transfer o right under the mortgage itself without anything more. Under the state of law

that governs the relational conspectus of land, landlord and lessee. It is hazardous to read authority for such leases as implied. In every case the

deed that brings in the mortgagee on land must, it appears of necessity, be strictly read against such authority which trenches upon the object of

mortgage and creates new, unconcealed and unintended situations and rights in favour of third persons. Such an approach does not in any manner

limit the benefaction of the statutes like Tenancy Act but on the other hand tends to sub serve all those who are on the land and cultivate e the same

and thus furthers the objective of such legislation.

15. Therefore a mortgagee who is expressly put in possession under an arrangement permitting appropriation of the crops of the field for the three

agricultural years would be bound to act in a manner prudent enough so that the property that was in his charge would not be lost to the owner at

the end of the period reserved by the mortgage and the latter would be entitled to resume it without any erosion of his rights. Any other approach

would mean entitlement to do any act that will permanently affect and as such be injurious to the property in his possession qua the mortgagor. It

follows that he may enjoy the property in such a manner as that the rights reserved by the mortgage to resume the property either upon satisfaction

of this debt or upon happening of stated contingencies are protected and are available under the deed itself. Implicit as it is, the mortgagor, has

acted in that regard in good faith and in the hope that upon satisfaction of the debt the property would revert back to him and anything that ruptures

that faith would be violative of the deed itself and authority thereunder. Mortgagee having taken possession under express obligations is in a

position akin to that of a trustee holding the property for other and it cannot be conceived that not only the property would be lost but it would

become impossible to repossess the same though the debt may be fully satisfied. This is more so because of express statutory results indicated by

the tenancy Legislations which inhibit determinable leases and introduce concepts of statutory purchase and compulsive transfer of property. It is

not sound therefore to hold that mortgagee would because of his debt and deed and in want of express term should be in a position to defeat firstly

and finally all the rights of his mortgagor to repossess the property. It is obvious that once lease is created that property would be lost and would

stand vested in the lessee by force of law itself. In the wake of such statutory provisions it would be reasonable to seek in the deed of mortgage of

agricultural lands specific authority in favour of the mortgagee to create leases. If such authority can be inferred several far reaching consequence

even operative upon rights of redemption as well of foreclosure will have to be worked out in a given case. Once the statute applies, lease is not

merely an encumbrance but is a substantive right capable of being enlarged, augmented and fruitiness into full ownership thus making the property -

- subject of initial transfer -- being permanently lost to both the parties. Unless, therefore, there rate express indications in the deed itself after the

coming into force of these enactment''s it is difficult to appreciate the submission that the mortgagors, who are driven to put the creditors in

possession because of their crying need of either taking a loan or to satisfy such loans which may be existing have intended that the mortgagee may

introduce lessees and eventually lose the property permanently. In spite of the benevolent provisions of the statute, i.e. the tenancy Act of 1958,

and inspite of a very wide and special definition of deemed tenants , Legislature excluded mortgagees in possession from that category. In other

words, mortgagee in possession of an agricultural land is till treated to be the creditor and the mortgagor to be debtor governed by the provisions

of the T.P. Act. Primarily there is thus nothing enacted to enlarge the right of the mortgagee of agricultural land. That also helps to ask for authority

to creates leases by such mortgagees. Even a cursory probe in some of the provisions subserves needs for all this . Section 41 of the Bombay

Tenancy and Agricultural Lands Act, 1958 confers a statutory right of purchase and that is available as soon as tenant contemplated by the Act

takes steps to purchase the land. If a mortgagee were to create such a lease though the period under the mortgagee may not be over in a given

case the right of such a tenant would arise for purchase and the very security would be liable to transferred under the compulsive process of that

provision. Similarly the lessees on land as on 1-4-61 would became statutory owners thereof u/s 46 or/and as on 1-4-63 u/s 49-A or within one

year if they choose to purchase the property as provided by Section 41 Permitting leases by mortgagees in a lawful manner only by the mere fact

of mortgage would erode all the equities and leave the security extinct and divested irrespective of the fact that mutual obligations between the

parties under such a mortgage remain yet to be worked out. Such a position cannot conceivably be contrived nor it is necessary to uphold.

16. There is yet another obvious point that may not be overlooked. The mortgagee who comes into possession of agricultural lands for

considerations which are for all intents loans and which are not the prices of land may induct tenants and the debtor will be force because of the

law to lost his ownership of the land property which are for all intents loans and which are not the prices of land may induct tenants and the debtor

will be forced because of the law to lost his ownership of the landed property which was handed over in the possession of such mortgagee as a

security for his debt in a given case by entirely inadequate consideration.

17. It is difficult therefore, to accept the submission that only because the mortgagee was placed in possession of the agricultural a land it must be

assumed that he could in spite of the provisions of such law induct the tenants validly, whether there be a term in the deed itself or not. As indicated

above, such course appears to be fraught with several serious consequence including eclipse of security. Unless therefore a deed expressly permits

particularly in view of the provisions of the land legislations which protect tenancies for a longer period and which confer statutory ownership on

the tenants of agricultural lands, it will be reasonable to imply authority lease agricultural land in favour of mortgagee in possession.

18 Apart from these anxious considerations, as I have stated, in the present deed there appears to be clear evidence of the intent of the parties that

the mortgagee was to remain in possession, cultivate the land and appropriate the fruits of the land or the crops thereof towards the satisfaction of

his interest. That is enough to hold that he was not authorized nor was entitled to induct. Laxman on the land and Laxman"s possession, therefore,

would be unauthorized and would not be that of deemed tenant.

19. Coming to the decision of the Supreme Court which was followed by the revenue authority and which was also pressed in aid for Laxman and

the mortgage i.e. the case of Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, it is apparent that the contest there was on the basis of a

mortgagee of 1891. There was not even a slightest doubt not there was any debate that the mortgage in possession was entitled to lease out the

land as a prudent manager of the property. The only question that fell for consideration was whether a person which was let on the land during the

course of such management by the mortgagee could be a deemed tenant". of the land. In other words for the purpose of that decision the

possession of the tenant was for all purposes lawful and it was not in any manner debated to be otherwise or unauthorized In context of those

facts, the provisions of section 4 of the 1948 Tenancy Act which are equivalent to Section 6 of the 1958 Tenancy Act, fell the consideration. The

Court therefore observed that all persons other than those mentioned in clauses (a(), (b) and (c) of Section 4 who lawfully cultivate land belonging

to other persons whether or not their authority is derived directly from the owner of the land must be deemed tenants of the land. In paragraph 7 it

is made clear by observing

..... But a tenant of the mortgagee in possession is inducted on the land in the ordinary course of management under authority derived from

the mortgagor and so long as the mortgage subsists, even under the ordinary law he is not liable to be evicted by the mortgagor"".

These observations of the Supreme Court clearly indicate that if mortgagee in possession had inducted a tenant in the course of the management

under the authority derived from the mortgagor, such a tenant will be a deemed tenant.

20. From these observations it does not follow that any person inducted by the mortgagee in possession without the authority of the mortgagor

would also partake the character and assume the status of deemed tenant"" . It is well settle that mere logical extensions from the dicta itself are not

the part of dicta. The ratio of that case which has to be understood in the context of the simple debate there, does not help the present controversy

because here is a deed which came to be executed in 1957 with the land legislation on anvil and by its term directed the mortgagee to remain in

possession and appropriate the crops by himself towards his interest.. In other words, it did not authorize creation of encumbrances of leases as

such, particularly when such leases could not be determined by efflux of time and in all likelihood would fruition itself in full ownership and frustrate

several equities attached to the property parted in possession by the mortgagor.

21. Provisions of Section 76(a) and Section 76(e) of the Transfer of Property Act were considered in the context of Bizarre Tenancy Act by the

Supreme Court in the case of Mahabir Gope and Others Vs. Harbans Narain Singh and Others, and on the construction of the deed of mortgagee

their Lordships found that the mortgagee was not entitled to grant the lease. It was observed that the basic rule is that a person cannot by transfer

or otherwise confer a better title on another than he himself has and that a mortgagee cannot, therefore, create an interest in the mortgaged

property which will ensure beyond the termination of his interest as mortgagee. The term in the deed there is provided the Ijardar should enter into

possession and occupation of the share let out in Ijara, cultivate the same pay 2 annas as reserved year after year to executants and appropriate

the produce thereof year after year on account of his having the Ijardari interest. The term was read as disentitling the mortgagees from locating

tenants on the land mortgaged. These principles available in Mahabir Gope and Others Vs. Harbans Narain Singh and Others, have been applied

by this Court while negativing the claims of the tenants on the basis of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 in

the case of Kamlakar and Company Vs. Gulamshafi Imambhai Musalman, and in the case of Bhanshali Kushalchand Ramji and Another Vs. Sha

Shamji Jivraj and Others, .

22. Further decisions of the Supreme Court in Prabhu Vs. Ramdev and Others, , do refer and explain the decision in Mahabir Gope and Others

Vs. Harbans Narain Singh and Others, for deciding the controversy that arose in each of those three cases. In Harihar Prasad''s case the

provisions of the Bihar Tenancy Act were being considered to find out whether mortgagee could be treated as a proprietor or a tenure-holder and

by reference to the definitions u/s 5(2) and (3) of the said Act the Court observed that the lessees holding land from the mortgagees could not be

treated as rights nor were entitled to the statutory rights u/s 21 of that Act.

23. In As a Asa Ram and Another Vs. Mst. Ram Kali and Another, the question arose under the U.P. Tenancy Act, where the tenant was

claiming hereditary tenancy u/s 29 (a) of that Act. It was observed that if there is no prohibition against letting of lands by mortgagees, then the

parties would be thrown back on their rights under the T.P. Act, and the lessees must still establish that the lease is binding on the mortgagors u/s

76(a) of the T.P. Act. If the transaction was not one which could be upheld as being a prudent one, then there was no admission of the tenant by

any person having authority to do so, and such a transaction though valid as between the mortgagee and the lessee, could not be the foundation to

acquire rights of hereditary tenants recognized under the UP . Tenancy Act.

24. In Prabhu Vs. Ramdev and Others, the case arose under the Rajasthan Tenancy Act 1955 and the Court took the opportunity explain

Mahabir Gope and Others Vs. Harbans Narain Singh and Others, . It was reiterated that a permissible settlement by a mortgagee in procession

with a tenant in the course of prudent management and the springing up of rights in the tenant conferred or created by statute based on the nature

of the land and possession for the requisite period, was a different matter altogether. It is only if the tenants were inducted with authority, then the

rights of such tenants may suitably be improved by virtue of the statutory provisions which may meanwhile come into operation.

25. These three decisions clearly emphasize the quest for finding authority to deal with the property in favour of the mortgagee and nothing more

can be created or granted by the mortgagee than what he had inhered under the transaction itself. Mahabir Gope and Others Vs. Harbans Narain

Singh and Others, is basically in unfolding the primary principles of which clearly As a Asa Ram and Another Vs. Mst. Ram Kali and Another,

provides an illustration that apply to the consideration in the present controversy.

26. Further in Sachalmal Parasram Vs. Ratnabai and Others, , the Supreme Court restated that the leases created by a mortgagee in possession

should terminate on redemption of mortgage, and negatived the claim of the tenant therein inducted by the mortgagee in possession for protection

under the rent control legislation viz., M.P. Accommodation Control Act, 1961 . In terms the decision of this Court in Kamlakar and Company

Vs. Gulamshafi Imambhai Musalman, (supra) was approved and relied upon. For protection of the rent control legislation , the Court observed

that the findings that the lease was not an act of prudent management and the deed stipulated that the lessee would vacate the house and hand over

the possession to the respondent No. 4 therein , were enough indication that there could be no landlord and tenant relationship between the

mortgagor and the tenant inducted by the mortgagee in possession. Though the Court has expressly laid down these principles as applicable to

urban properties, similar would be the effect in cases of properties which came under the sweep of statutory protection and eventual contemplation

of compulsive change in ownership rights.

27. These decisions indicate unmistakably that unless an act of the mortgagee in possession is supported by authority or can be said to be in the

prudent management of the property in his possession and not destructive of the rights in property itself, there cannot be a lease of agricultural land

created by the mortgagee in possession with regard to the mortgaged property binding upon the mortgagor. Obviously the matter has to be

decided on the basis of the terms and conditions under which the mortgagee in possession has resumed the property as a security for his debt and

subject to law that governs enjoyment of such property. Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, was a case of clear authority

to let the land when the mortgagee entered in possession and when the initial rights were carved out in his favour. The contemplations of that case

are not and need not be treated as universal. The facts therein make its ratio inapplicable to the clear indication of the intent of the present deed

heightened by the statutory strides in the field of land legislation.

28. Under such circumstances, the onus of establishing the lawful and authorized cultivation was on Laxman. It is enough to observe that he has

miserably failed in the same. He merely relies on the transaction evidenced by the deed. As stated above, if that deed did not permit creation of

lease in favour of Laxman which would affect the rights under the deed itself, he cannot be said to have discharged the burden to establish that he

was lawfully and with authority cultivating the land belonging to the other. In fact evidence indicates that Laxman was an attesting witness to the

registered deed itself. Knowledge of the terms even will be attributed to him because he admits that it was the mortgagee who had allowed him on

land.

29. That being the plain and clear result of the deed of mortgage itself and the law that governs the relationship of the mortgagor and mortgagee in

the context of tenancy legislation, it has to be fund that Laxman is in unauthorized possession of the agricultural land and has to be deal with as

such. He cannot be treated a deemed tenant entitled to any statutory ownership.

30. The orders made by the revenue authorities and impugned in the present petition holding otherwise are this erroneous and are set aside. The

petition is allowed with costs.

31. Petition allowed.