

APPELLATE CIVIL

Before Kapur, J.

SUCHA SINGH AND OTHERS,—Defendants-Appellants

versus

NIGHAYA RAM,—Plaintiff-Respondent

Civil Regular Second Appeal No. 40 of 1953

1953

May, 29th

Punjab Tenancy Act (XVI of 1887)—Section 53—Extinguishment of occupancy rights—Occupancy tenant applying for notice to be served on the landlord of his intention to sell his occupancy rights—Landlord willing to purchase—Sale price fixed by Revenue Officer—Landlord paying the price—Price enhanced in appeal—Landlord not paying enhanced price—Whether occupancy rights extinguished—Mutation—Effect of.

An occupancy tenant applied under section 53(2) of the Punjab Tenancy Act, for a notice to be served on the landlord of his intention to sell his occupancy rights in certain property which was mortgaged with the landlord. Permission was granted and price was fixed by the Revenue Officer which was paid by the landlord. The tenant filed an appeal for enhancement of price which was enhanced but the landlord did not pay it. Mutation in favour of the landlord as proprietor was, however, effected in the presence of the tenant. The question arose whether in these circumstances the occupancy rights had become extinct.

Held, that the price fixed by the Revenue Officer was subject to any order which the appellate court might pass, and in the present case the appellate court had passed an order increasing the value of the rights of the mortgagors and as that money had never been paid the provisions of subsection (6) of section 53, never became operative. Therefore, there was no extinction of the rights.

Held, that mutation should represent true facts and not what the Revenue Officer thinks are true facts. In the present case the value of the occupancy rights as determined by the Revenue Officer in appeal had not been paid and, therefore, the occupancy rights never became extinct and the mere fact of there being a mutation would not be sufficient. The landlord still remains a mortgagee and there was no hostile title asserted as against the mortgagor. Mutation is not sufficient to change the nature of possession from that of a mortgagee to that of an owner.

Ram Ganesh Rai v. Babu Rup Narain Rai and others (1), and *Godar v. Nizam Din* (2), relied on.

Second Appeal from the decree of Shri J. N. Kapur, Additional District Judge, Ambala, dated 27th December, 1952, affirming that of Shri B. L. Malhotra, Sub-Judge, 1st Class, Rupar, dated the 14th July, 1950, awarding a decree to the plaintiff for joint possession of the land in suit with costs by redemption on the payment of Rs. 300 to the defendants within three months from today.

RAJINDRA NATH AGGARWAL and D. N. AGGARWAL, for Appellants.

TEK CHAND, for Respondent.

JUDGMENT

Kapur, J.

KAPUR, J. This is a defendants' appeal against an appellate decree passed by Mr. Jagdish Narain Kapur, Additional District Judge, Ambala, dated the 27th of December, 1952, confirming the decree of the trial Court.

The facts of the case which have given rise to the appeal are that on the 8th of June 1915, Nighaya and his brother mortgaged occupancy rights of certain land to the predecessors of Sucha Singh and others for a sum of Rs. 1,000. In 1928 the occupancy tenants applied that they wanted to sell their occupancy rights. An order was made under section 53 of the Punjab Tenancy Act, on the 15th of May 1930, allowing the occupancy tenants to sell 11 *bighas* 19 *biswas* to Sucha Singh for a sum of Rs. 675 out of which Rs. 375 were to be paid within three weeks and Rs. 300 were to go towards the payment of the mortgage. I am informed that Rs. 375 were paid within the time allowed in the order. An appeal was taken against this order by the occupancy tenants which was allowed on the 7th of August 1930 to this extent that the value was varied from Rs. 150 per *bigha* to Rs. 160 per *bigha*. This additional sum of money, it appears, was never paid. On the 19th of January 1931, a mutation of sale was sanctioned when both

(1) 80 I.C. 944 at p. 946

(2) 120 I.C. 789

the occupancy tenants as well as the mortgagees Sucha Singh and others were present. At that time the occupancy tenants and others stated that they will file a suit to enforce their right (*lekan ham dawa diwani karenge*). In 1932 Nighaya Ram a suit was brought by the occupancy tenants claiming that they were entitled to fifteen-anna share. Kapur, J. But this suit was dismissed.

On the 20th July 1942, a suit for redemption of 28 *bighas* was brought which was decreed. On the 11th of January 1950, Nighaya brought a suit for redemption of the balance, that is, 11 *bighas* 19 *biswas*. The defence was that the mortgagee rights had been extinguished because of the purchase under section 53 of the Punjab Tenancy Act and that even if there was no valid sale the right of the mortgagees had ripened into ownership because of their having been in adverse possession for the statutory period of twelve years. The learned Additional District Judge in appeal held that the mortgage was still subsisting and it had not been turned into a sale and that no question of adverse possession arose because the possession of the defendants was not as owners. The defendants have come up in second appeal to this Court.

Under section 53(5) of the Punjab Tenancy Act when the landlord pays up the price as fixed by the Revenue Officer within the time prescribed in the order he shall be deemed to have purchased the right, and under subsection (6) of section 53 when the value is so paid, the right of occupancy becomes extinct and the Revenue Officer has to put the landlord in possession on an application being made in that behalf by the landlord, and if the right of occupancy is already under mortgage to the landlord the tenancy passes to landlord unencumbered by the mortgage.

The question to be decided in the present case is whether the occupancy rights had become extinct in the present case. No doubt, the landlord did pay Rs. 375 which were ordered to be paid within three weeks, but this was subject to any order which the appellate Court might pass, and in the

Sucha Singh present case the appellate Court had passed an
 and others order increasing the value of the rights of the
 v. mortgagors and as that money had never been paid
 Nighaya Ram the operation of subsection (6) of section 53 never
 Kapur, J. became operative. Therefore, there was no ex-
 tinction of the rights.

It is next submitted on behalf of the appellant that as a mutation was entered in the presence of both the parties in regard to the proprietary rights, the possession of the mortgagee became adverse from that date. This entry was not the result of acquiescence on the part of the occupancy tenant. He did state at that time that he would bring a suit and he actually brought a suit which was misconceived. But the fact remains that mutation should represent true facts and not what the Revenue Officer thinks are true facts. In the present case the value of the occupancy rights as determined by the Revenue Officer in appeal had not been paid and, therefore, the occupancy rights never became extinct and the mere fact of there being a mutation would not be sufficient. The landlord still remains a mortgagee and there was no hostile title asserted as against the mortgagor. In *Ram Ganesh Rai v. Babu Rup Narain Rai and others* (1), it was held that a mere mutation entry of the mortgagee as a proprietor clearly cannot convert his possession as mortgagee into adverse possession, and the Lahore High Court in *Godar v. Nizam Din* (2), held that a mortgagee in possession cannot by getting himself recorded in the revenue papers as owner defeat the right of the mortgagor to redeem. Mr. Rajinder Nath who has appeared for the appellant has very strenuously argued that the nature of the entry having been changed is sufficient manifestation of the intention of the appellant to hold the land as owner and not as mere mortgagee. For that he has relied on mutation which in my opinion is not sufficient to change the nature of possession from that of a mortgagee to that of an owner. In my judgment the learned

(1) 80 I.C. 944 at p. 946

(2) 120 I.C. 789.

District Judge has rightly held that no case of Sucha Singh
adverse possession had been made out. and others

v.

I would, therefore, dismiss this appeal, but Nighaya Ram
considering that the case was not free from doubt
on question of law, I would leave the parties to
bear their own costs in this Court and in the Courts
below. Kapur, J.