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Court : Karnataka

Decided On : Jan-31-1952

Reported in : AIR1952Kant82; AIR1952Mys82

Judge : Balakrishnaiya and ;Vasudevamurthy, JJ.

Acts : [Registration Act, 1908](#) - Sections 2(11), 17(1), 17(2) and 17(4)

Appeal No. : Second Appeal No. 551 of 1948-1949

Appellant : Krishnamurthy

Respondent : Krishna Rao and ors.

Advocate for Def. : S. Rangaraj, Adv.

Advocate for Pet/Ap. : B.R.L. Iyengar, Adv. for ;B.T. Ramaswamy, Adv.

Judgement :

1. The plaintiff is the assignee on 6/10/1946 of a mortgage with possession from the second defendant who is the mortgagee from defendant 1 for Rs. 250/- under a registered mortgage deed dated 12/3/1906; he prayed for a decree against the mortgage property and against defendant 1 personally and if the amount was not so realised against defendant 2 personally. The plea of defendant 1 is that defendant, 2 received the entire sum of Rs. 250/- in full settlement of the debt under a receipt dated 3-1-1942. Defendant 2 remained ex parte. The trial Court

decreed the suit against both the defendants. On appeal the decree was confirmed as against defendant 2 but was set aside as against the mortgage property and defendant 1. This appeal is preferred against the decision of the appellate court by the plaintiff.

2. The main point urged by the learned advocate for the appellant is that the receipt of discharge is inadmissible and even otherwise it cannot extinguish the mortgage as it is unregistered. Ex. II is the receipt which, has been admitted in evidence without any protest or objection and proved in the case. Moreover, there is the additional oral evidence of D. Ws. 1 to 3 about the discharge of the debt and the same has not been impeached in any way. Thus the evidence regarding the discharge of the suit claim is conclusive. The lower appellate Court came to the conclusion relying upon the decision of this Court in '4 Mys. L. J. 83 viz.':

'Even though a receipt purports to extinguish the mortgage and even though therefore compulsorily registrable in order to be effective for evidence of the extinction of the mortgage, it will in our opinion be receivable in evidence of the payment of the mortgage amount even though unregistered, and oral evidence as to such payment will of course be admissible.'

We are of opinion that the view taken by the appellate court about the discharge of the suit debt is perfectly justified.

3. It is further argued that the facts leading to the decision in '4 Mys. L. J. 83' are inapplicable to the present case as Ex. II is not a mere receipt evidencing discharge of the debt, but operates as an extinguishment of the mortgage security. The appellant relied for that position upon 'BHAN SINGH v. NARINJAN SINGH', AIR 1940 Lah 68 in which the learned Judge has observed that

'Where a receipt recites that the balance of the mortgage money had been paid to the mortgagee and possession had been given back, the receipt is inadmissible in evidence if it is not registered.'

4. Section 17, Sub-section 2(11) of the Registration Act which provides that a receipt for payment of the money due under a mortgage when the receipt does not

purport to extinguish the mortgage is an exception to Clause C of Section 17(1) of the Act and is not therefore compulsorily registrable as it operates as sufficient receipt for payment of money due under the mortgage. The test therefore is whether the receipt purports to extinguish the mortgage in which case it requires registration, taut not otherwise. It thus depends upon the construction of the document. It is no doubt stated in Ex. II that the property is 'given up'. The expression that is pointed out as extinguishing the mortgage in Ex. II is that the 'property was given up' but it does not in our opinion amount either to retransfer of possession of the property or extinguishment of the mortgage. A similar view has been expressed by a division bench of the Calcutta High Court in 'RAJNIKANTA NATH v. ALI NOAZ' : AIR1930 Cal79 where Mallik J. observes : 'A document, by which a usufructuary mortgagee admits that his claim has been satisfied and releases the property to the possession of the mortgagor, does not require registration.' The above observation aptly applies to the interpretation of Ex. II in the present case, which, we hold, does neither purport to transfer the property nor extinguish the mortgage security. It merely states that the property is 'given up' which may at the most be taken to mean, that it is abandoned.

5. We are therefore of opinion that the plaintiff is not entitled to a decree against defendant 1 or the property. In confirming therefore the decision of the lower appellate court this appeal stands dismissed, parties bearing their own costs. The balance of printing charges may be recovered from the concerned Advocate.

6. Appeal dismissed.