

Kashi Vs. Bajrang Prasad

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Court : Allahabad

Decided On : Jun-22-1907

Reported in : (1908)ILR30All36

Judge : Richards, J.

Appellant : Kashi

Respondent : Bajrang Prasad

Judgement :

Richards, J.

1. The facts out of which this appeal arises are shortly as follows: In the year 1902 the plaintiff sued for redemption of certain mortgaged property. A decree was obtained on the 17th of December 1902. On appeal the amount decreed for redemption was increased, but the decree was confirmed on the 3rd of February 1903. The plaintiff paid what was due according to the decree and got possession some time in the earlier part of the year 1903. The present suit was then instituted by the plaintiff to recover certain money which he alleged was due by the defendant: he says the defendant received certain rents out of the property from August 1902 to March 1903. During the time that these alleged profits were received by the defendant, he was undoubtedly in possession of the property as mortgagee, and it is impossible to deny that the present suit is a suit for a further settlement and adjustment of accounts between the plaintiff and the defendant

occupying the positions of mortgagor and mortgagee. The plaintiff contends that what he is sued for was not covered by the previous accounts between the parties, and according to the judgment of the Court of first instance this allegation is not without foundation. It is contended, however, on behalf of the defendant, that the present suit cannot be maintained. There is no doubt that the settlement of account between the plaintiff and the defendant, (that is, the amount for which each was liable to account) was directly and substantially in issue in the previous suit. I think it absolutely clear that in a suit for redemption there ought to be a complete and final settlement of all accounts between the mortgagor and the mortgagee, right up to the time of actual redemption or sale as the case may be. Section 92 of the Transfer of Property Act provides that in a redemption suit the Court is to pass a decree ordering that an account be taken of what will be due to the defendant upon a date to be fixed by the Court, when clearing the amount to be due. Section 94 speaks of the final adjustment of the amount to be paid by a mortgagor in case of redemption. In the case *Vinayak Shivrao Dighe v. Dattatraya, Gopal* (1902) I.L.R. 26 Bom. 661. Jenkins, C.J., makes some very cogent remarks as to what ought to be the result, between parties, of accounts in mortgage suits. I entirely agree with these remarks, and in my judgment the claim of the plaintiff in the present case could and ought to have been settled in the previous litigation and that a separate suit does not now lie. I accordingly dismiss the appeal with costs.