

Prasadi Lal and anr. Vs. Mohan Lal

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Court : Allahabad

Decided On : Jul-04-1922

Reported in : (1923)ILR45All46

Judge : Stuart and ;Sulaiman, JJ.

Appellant : Prasadi Lal and anr.

Respondent : Mohan Lal

Judgement :

Stuart and Sulaiman, JJ.

1. This is a defendant's appeal arising out of a suit for sale on the basis of a mortgage deed, dated the 21st of September, 1910, executed by defendants Nos. 1 and 2 and the father of defendant No. 3 in favour of plaintiff No. 1, the father of plaintiff No. 2, and Mohan Lal, defendant No. 4. The plaintiffs' case was that they were entitled to half the mortgage money while Mohan Lal was the owner of the other half, but as Mohan Lal had purchased the entire equity of redemption in execution of a simple money decree, they sued to recover only half the mortgage money by sale of the entire mortgaged property. The pleas raised in defence by the contesting defendant Mohan Lal were (1) that the money was advanced by him alone and he was the sole mortgagee, the other names having been entered only fictitiously, and (2) that in any case the plaintiffs were entitled to sell only half of the mortgaged property.

2. The court of first instance came to the conclusion that the plaintiffs had a share in the mortgagee rights, and held that out of the mortgage money amounting to Rs. 500 the plaintiffs had contributed two sums of Rs. 75 and Rs. 87-8-0, and it gave them a decree for these two sums plus interest, but directed that the amount be realized by sale of the entire mortgaged property. This decree has been affirmed on appeal.

3. The defendant has come up in second appeal to this Court and two main points are urged. The first is that the sum of Rs. 75 paid by the plaintiffs was included in the sum of Rs. 87-8-0 referred to in the written statement. This contention has no force. The sum of Rs. 75 has been proved to the satisfaction of both the courts below to have been paid by the plaintiffs direct to Musammat Manbhari, a previous creditor mentioned in the deed, whereas Rs. 87-8-0 is an item which is found to have been paid to Mohan Lal, defendant, himself towards the bond in suit.

4. The second point raised is as to the plaintiffs' right to sell the whole mortgaged property.

5. Now, it may be that in order to effect a merger the two rights must be co-extensive in some share, howsoever small, though one be higher than the other, and that ordinarily the acquisition of a share in the equity of redemption by one only of several mortgagees does not necessarily break up the integrity of the mortgage so as to entitle a mortgagor, interested in only a fractional part of the property, to redeem his share on payment of a proportionate amount. In such cases the other mortgagees, who have neither expressly nor by implication agreed to the breaking up of the integrity, may successfully resist the claim. But that point does not arise in the present case which stands on quite a different footing. Here the plaintiffs, in suing for only half the mortgage money, have practically admitted that something has happened which has had the effect of satisfying half the mortgage amount. It would be highly inequitable to allow the plaintiffs to throw the burden of their share of the mortgage money on the whole property, for it may very well place the defendant in a very much worse position than he might have been in but for the auction purchase. Had the plaintiffs treated the mortgage as being still intact and sued for the whole sum, impleading Mohan Lal merely as a

representative of the mortgagors, and agreed to share with Mohan Lal either the sale proceeds or the property purchased in execution of the mortgage decree, the case might have been different. But to permit the plaintiffs to sell the whole property in order to realize simply their share of the mortgage money would be grossly unjust, as it may possibly result in Mohan Lal's losing his share of the mortgage money as well as the mortgaged property. The plaintiffs by suing for only their share of the mortgage money must be deemed to have admitted that the balance of the mortgage money has been satisfied by the acquisition of a proportionate share of the mortgaged property.

6. We are therefore distinctly of opinion that in the circumstances of this case the plaintiffs should be given a decree to recover their share of the mortgage money as against a proportionate part of the mortgaged property only, which comes to Rs. 162-8-0/Rs. 500 = 13/40.

7. We accordingly allow the appeal and modify the decree of the courts below, directing that the amount decreed be realized by sale of only 13/40 of the mortgaged properties. A fresh decree under Order 34, Rule 4, will be prepared. We extend the time for payment' up to six months from this date.

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