

Abadi Begam Vs. Asa Ram

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1880)ILR2All164

Judge : Pearson and ;Spankie, JJ.

Appellant : Abadi Begam

Respondent : Asa Ram

Judgement :

Spankie, J.

1. The plaintiff's husband, by a deed registered on the 29th April 1866, settled upon her a sum of Rs. 12, in lieu of dower, to be paid monthly from the income of the rent-free land of Nagla Asadnagar, in mauzas Nurpura, Jasmai, Asmatpur, and Dhalawal, by himself, and his heirs and successors after him. If either he or any of his heirs or successors failed to make the payment monthly, the lady was at liberty to sue for the sum due in the Civil Court. The deed further provides that no transfer of the property shall be made unaccompanied by a condition providing for and securing the required monthly payment of Rs. 12 from the profits. When the plaintiff's husband, Maujad Ali Shah, had subsequently mortgaged the property to Lachman Singh, one of the defendants, and to Madho Singh, on the 1st December 1870, it was recorded in the deed of mortgage that a monthly allowance of Rs. 12 was to be paid to the plaintiff. The first mortgagee acknowledged this fact. The first

mortgagee subsequently, on the 24th August 1874, sub-mortgaged the property to Asa Ram, the other defendant. The plaintiff, therefore, sued him along with Lachman Singh, the first mortgagee, as being in possession of the lands from which the allowance was to be paid. The Munsif decreed against Asa Ram in favour of the plaintiff, exempting Lachman Singh. The Judge, however, held that there was no clause in the second mortgage-deed binding him to continue the payment of Rs. 12 monthly to the plaintiff, as had been the case in the first mortgage-deed with regard to the first mortgagee, and further he found that it was clearly shown by Asa Ram's witnesses that, at the time of entering into the sub-mortgage, Lachman Singh had bound himself to continue the payment, whereas the second mortgagee had never undertaken to pay it. Moreover, Lachman Singh's sons and others had purchased the proprietary rights in the property, and Lachman Singh's interest in it had never ceased. The Judge decreed Asa Ram's appeal, and gave the plaintiff a decree against Lachman Singh alone.

2. It is contended that Asa Ram, sub-mortgagee, being in possession of the property charged with the payment of the monthly allowance of Rs. 12, is bound to pay it.

3. We are of opinion that the contention is right. The plaintiff is not affected by any arrangement made between Lachman Singh and Asa Ram. She looks to payment of her allowance from the income of the land charged with the burden of paying it, and therefore she has a claim upon the party who is in possession of the lands. In this case the sub-mortgagee, in accepting the mortgage from Lachman Singh, must have been aware of the conditions under which the latter had accepted the original mortgage, and therefore also must have been aware of the lien created by Maujad Ali Shah in favour of his wife, and which lien, with or without notice, extends to all persons claiming to hold the lands, to the extent of the amount of the profits set apart for the benefit of the plaintiff. With this view of the case we decree the appeal, reverse the decree of the lower Appellate Court, and restore the decision of the first Court with costs.