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SooperKanoon Citation : sooperkanoon.com/449391

Court : Allahabad

Decided On : Mar-02-1931

Reported in : AIR1931All378; 140Ind.Cas.524

Appellant : Raghunath Prasad and anr.

Respondent : Jwala Prasad and ors.

Judgement :

King, J.

1. This appeal arises out of a suit for damages for fruit misappropriated by the defendant from a grove and for a permanent injunction restraining the defendant from interfering with the plaintiffs' possession of the trees of the grove. On 15th September 1927, the defendant executed a usufructuary mortgage of certain plots of land, which have been held to be grove land, in favour of the plaintiffs. The property was described as being resumed muafi, and it was recorded as sir land. On 20th January 1928, the zamindar brought a suit for the determination of the rent of the mortgagor on the ground that by reason of the transfer of his proprietary rights under the usufructuary mortgage, he had become an exproprietary tenant and his rent should be fixed. Accordingly the revenue Court fixed Rs. 10-10-0, as the rent of the defendants as an exproprietary tenant. Subsequently, a dispute arose between the parties or their lessees for possession and enjoyment of the produce of the grove, and the plaintiffs instituted the present suit.

2. The principal defence was that as the mortgagor had become an exproprietary tenant of the land in suit, the trees which formed part of the exproprietary holding could lawfully be retained by the mortgagor notwithstanding the terms of the mortgage deed. The jurisdiction of the civil Court was also challenged, as it was stated that the relation of landlord and tenant exists between the parties. Both the Courts below have decreed the plaintiffs' claim and the defendant comes to this Court in second appeal.

3. It is clear that under the terms of the mortgage deed itself the mortgagee, namely the plaintiff, is entitled to the usufruct of the grove. It was contemplated in the mortgage deed itself that by reason of the transfer the mortgagor would become an exproprietary tenant, and it was expressly provided that in such an event, if rent were fixed upon the holding of the defendant as an exproprietary tenant, then he would be liable to pay that rent, but the mortgagee was to be entitled to the full use and enjoyment of the grove, to appropriate the produce and to plant new trees. The question is whether the mortgagor is bound by the terms of his own agreement, or whether this agreement is void as contrary to the provisions of the Agra Tenancy Act.

4. The appellant has relied upon a ruling of *Mt. Hafizan v. Chakko Lal* : AIR1927 All779 , in which it was held that groves situate on exproprietary holdings partake of the nature of the holding on which they stand, and as such cannot be attached and sold in execution of a decree. This was the decision of a single Judge, but it followed a Full Bench Division in *Jugul v. Deokinandan* [1887] 9 All. 88 (F. B.). These rulings however are not strictly applicable to the facts of the present case. The mortgage of the land, with the grove standing thereon, was made by the mortgagor as a proprietor before any question of his being a mere exproprietary tenant arose. The mortgage of the trees therefore was perfectly valid and it is open to question whether the mere fact that the mortgagor subsequently was found by the revenue Court to be an exproprietary tenant, in consequence of the transfer, renders the valid mortgage of the trees invalid. It is necessary for me to consider that point for reasons which will presently appear. In any case the point decided by the rulings mentioned does not arise, because there is no question whether the defendant as an exproprietary tenant, is now able to transfer the grove or whether

the grove can be attached and sold in execution of a decree against him.

5. The finding of the revenue Court that the defendant is an exproprietary tenant of the land in suit (which finding necessarily is implied in the determination of rent payable by the defendant as an exproprietary tenant), is, in my opinion, binding upon the civil Courts and cannot be challenged. The decision of this appeal appears to me to turn upon the provisions of the last paragraph of Section 15, Agra Tenancy Act 1926. Section 15, lays down certain rules regarding the relinquishment of exproprietary rights. The last paragraph runs as follows:

Notwithstanding anything in this section, where the property transferred by means of a mortgage of the kind specified in Sub-section (5) Section 14, consists wholly of a specific area of sir the mortgagor may by simultaneous agreement in writing waive his exproprietary rights, and in that case' the mortgaged land shall, if the mortgagor regains within 12 years of the date of the transfer possession thereof on repayment of the mortgage, resume the character of sir.

6. In my opinion the terms of this provision apply exactly to the facts of the present case. The property was transferred by a usufructuary mortgage which is a mortgage of the kind specified in Sub-section (5), Section 14. The property consisted wholly of a specific area of sir. The mortgagor moreover, in the mortgage deed itself, expressly agreed in writing that in the event of his being declared an exproprietary tenant he would be liable to pay the rent determined (under Section 36), but the mortgagee should retain full possession and enjoyment of the mortgaged property, that is the grove. In my opinion this amounts to a waiver of his exproprietary rights, since he expressly consented that the mortgagee should retain possession of the mortgaged property which would form the subject of the exproprietary rights. ,

7. In view of this express provision of the Agra Tenancy Act, I think it is not open to the mortgagor to claim that he can disregard the terms of the contract of mortgage, and that he can insist upon retaining possession of the land and grove in exercise of his rights as an exproprietary tenant. In my opinion the Court below have come to a right decision and I dismiss the appeal with costs. In my opinion this is a fit case for a Letters Patent appeal.

