

Kalyan Mal Vs. Samand and ors.

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SooperKanoon Citation : sooperkanoon.com/451421

Court : Allahabad

Decided On : Jan-09-1913

Reported in : AIR1914All375; (1913)ILR35All157

Judge : Tudball, J.

Appellant : Kalyan Mal

Respondent : Samand and ors.

Judgement :

Tudball, J.

1. This application for revision arises out of the following circumstances: One Abdul Rahman was a zamindar of, plot No 1381, which is involved in the present suit. He cultivated it as his sir land. On the 11th of May, 1892, he gave a usufructuary mortgage to the predecessors in title of the present defendants. In 1897 Abdul Rahman's proprietary rights were sold in execution of a decree and purchased by Kalyan Mal. Subsequently to this the heirs of Abdul Rahman were recorded in the patwari's papers as exproprietary tenants of that plot. The mortgagees under the deed of the 11th of May, 1892, were recorded as mortgagees of the exproprietary tenure. Kalyan Mal brought a suit against the heirs of Abdul Rahman for the rent of this plot and obtained a decree, and the formality of ejectment was gone through, on the 27th of December, 1910. As a matter of fact the mortgagees remained in possession and were no parties

whatever to the proceedings in the Revenue Court taken by Kalyan Mal. The present suit, out of which this application has arisen, was brought against the mortgagees, the predecessors in title of the opposite party, ostensibly under Section 58 of the Tenancy Act. The defence of the mortgagees to the suit was that the relation of landlord and tenant did not exist between the parties and that they were the mortgagees of the proprietary rights. In other words they clearly set up their mortgage, and said that Kalyan Mal was a mortgagor, having acquired the equity of redemption and that they were the mortgagees. The first court dismissed the suit, holding that the relationship of landlord and tenant did not exist between the parties. (sic) Mal appealed to the Commissioner, who held that a question of proprietary title was involved in the case and that an appeal lay to the District Judge. On the 24th of February, 1912, he returned the appeal for presentation to the proper court. The appeal was presented on the 26th of February, 1912, to the District Judge. An affidavit was filed. The appeal was admitted and then on the 19th of June, the District Judge made the following order: 'Heard pleader. A mortgagee of a right to occupy ex sir land has been ejected, as the expropriator relinquished, though without redeeming the mortgagee. There is no question of proprietary title, nor was any question of jurisdiction decided in the lower court. No appeal lies here. Returned.'

2. It is perfectly clear that the defendants distinctly claimed a proprietary title, or at least a portion of the bundle of rights which go to make up proprietary title. An appeal did lie to the District Judge. I, therefore, admit the application, set aside the order of the District Judge and direct the Judge to readmit the appeal on its original number and proceed to hear and decide it according to law. I make no order as to costs.