

Daulat and ors. Vs. Munshi and ors.

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SooperKanoon Citation : sooperkanoon.com/453956

Court : Allahabad

Decided On : Dec-20-1906

Reported in : (1907)ILR29All262

Judge : John Stanley, C.J. and ;William Burkitt, J.

Appellant : Daulat and ors.

Respondent : Munshi and ors.

Judgement :

John Stanley, C.J. and William Burkitt, J.

1. The question raised in this appeal appears to us to be concluded by authority. It is this--whether, when the integrity of a mortgage has been broken up upon the purchase by the mortgagees of the equity of redemption in a portion of the mortgaged property, one of several mortgagors is entitled to redeem the remainder of the mortgaged property against the wish of the mortgagees, or is his right of redemption confined to his share of the property? In the case of Nawab Azimut Ali Khan v. Jowahir Sing (1870) 13 Mco, I.A., 404 their Lordships of the Privy Council held that co-mortgagors, who were entitled to a portion of mortgaged property, could not redeem against the will of the mortgagee any portion of the mortgaged property save their own village. They held that the mortgagors could not acquire the interest of the mortgagee in other parts of the mortgaged property against the will of the mortgagee. They say in the course of their judgment that 'the

appellant (i.e., the mortgagee), if desirous of retaining possession of these villages as mortgagee is entitled to do so against the plaintiffs, whose fight in that case is limited to the redemption and recovery of their village of Husseinpur upon payment of so much of the sum deposited in Court as represents the portion of the mortgage-debt chargeable on that village.' In this Court in the case of Kuray Mal v. Puran Mal (1879) I.L.R.. 2 All., 585, Spankie and Oldfield, JJ., adopted the same view and quoted the authority of the case to which we have referred. In that case it was held that where all the proprietors of an estate joined in mortgaging it, and the mortgagee subsequently purchased the share of one of the mortgagors, and one of the mortgagors sued to, redeem his own share and also the share of another of the mortgagors, he could only redeem his own share. To the same effect is the decision of Rampini and Sale, JJ., in the case of Girish Chunder Dey v. Juramoni De (1900) 5 C.W.N., 88. In view of these decisions we must allow the appeal; but before we can finally determine it, we must have findings of the lower appellate Court upon certain issues. These are as follows:

(1) What portion of the mortgaged property has been purchased by the defendants, or any of them, and how much of it still remains subject to the mortgage of the 10th of July 1843 in the pleadings mentioned?

(2) What portion or share of the mortgaged property belongs to the plaintiff's and what proportion of the mortgage-debt is chargeable against that portion or share, regard being had to the provisions of Section 82 of the Transfer of Property Act

2. We remand these issues to the lower appellate Court under the provisions of Section 566 of the Code of Civil Procedure, and direct the Court to take such additional evidence as may be requisite On return of the findings the parties will have the usual ten days for filing objections.