

Jangali Singh Vs. Ramjag Singh

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Court : Allahabad

Decided On : Mar-21-1944

Reported in : AIR1944All198

Appellant : Jangali Singh

Respondent : Ramjag Singh

Judgement :

ORDER

Verma, J.

1. Having heard learned Counsel for the parties, I have come to the conclusion that this application for revision must be allowed. It appears that on 22nd June 1874, one Ajudhia executed a deed of mortgage in favour of one Moti Rai mortgaging certain plots of land in lieu of Rs. 500. By various devolutions the interest of the mortgagor Ajudhia became vested in Ramjag Rai, Jit (or Chet) Narain Rai and Salig Rai and the interest of the mortgagee came to be vested in one Mt. Sahodra Kunwar. On 1st September 1913, Ramjag, Jit (or Chet) Narain and 'Salig brought suit No. 391 of 1913 for redemption against Mt. Sahodra Kunwar. The claim of the plaintiffs was that they were entitled to redeem on payment of Rs. 512. The Munsif of Ghazipur, in whose Court the suit was brought, decreed the suit on 23rd April 1914. He held, however, that the amount which the plaintiffs mortgagors were bound to pay to the defendant mortgagee was Rs.

3489-15-0 and not Rs. 512 as alleged by the plaintiffs. The operative portion of the judgment was in the following words : 'Suit is decreed for redemption. Plaintiffs should pay up Rs. 512 + Rs. 2977-15-0 = Rs. 3489-15-0, and defendant's costs of the suit, up to Jeth. Sudi Purnamashi next. If the payment is not made within this time, plaintiffs will be debarred from all rights to redeem the property. Usual decree for redemption to be prepared.' A decree followed and the order contained in the judgment, quoted above, was incorporated in the decree, the words with which we are concerned being as follows : 'Agar andar miyad ke adaegi na ho to muddayan ke jumla istehqaq in fika-k jaedad saqit honge.' There was also para. 2 in the decree as follows : 'If the amount aforesaid is not deposited on or before Jeth Sudi Purnamashi next, the plaintiffs shall be debarred from all right to redeem the property.'

2. The plaintiffs, mortgagors, did not challenge this decree by filing an appeal, or otherwise. They did not also pay to the mortgagee, or deposit in Court for payment to her, the amount mentioned in the decree within the time fixed or, for the matter of that, at any other time. The result was that the decree directing that the plaintiffs be debarred from all right to redeem the property became operative.

3. More than twenty seven years later the mortgagors Ramjag Rai, Jit (or Chet) Narain Rai and Salig Rai, filed an application, on 14th October 1941, in the Court of the Munsif, praying that the judgment as well as the decree dated 23rd April 1914, be amended by deleting the words, 'if the payment is not made within this time the plaintiffs will be debarred from all rights to redeem the property' and by substituting therefor the words, 'the property shall be sold.' Jangli Rai, Sheo Shanker Rai, Ram Badan Rai and Chandra Deo Rai were impleaded as the opposite parties to this application, apparently on the ground that they were the successors-in-interest of Mt. Sahodra Kunwar. The application purported to be under Sections 151 and 152, Civil P.C., and the sole allegation on which the application was based was that the words of which deletion was sought had been written by the Munsif in 1914 in consequence of an accidental slip (sahwan tahrir hogaya). One of these opposite parties, Jangli Rai, filed a written reply to the application and contended, in substance, that the Court had no jurisdiction to make the amendment prayed for under Sections 151 and 152 of the Code. The

Munsif has granted the application and has ordered that the amendment prayed for be made in the judgment and the decree dated 23rd April 1914. Jangli Rai has filed this application for revision against that order. The ground on which the Munsif has based his order is that, in his opinion, the direction in question contained in the decree dated 23rd April 1914, was wrong and 'obviously against the clear provisions of law.' He has expressed the view that the then Munsif, instead of directing that the plaintiffs, in the event of their failing to pay the amount declared by the decree to be payable by them on or before the date fixed by the decree, shall be debarred from all right to redeem the property, should have directed that, in the event of default in payment, the property shall be sold. This opinion of the Munsif is based on the view that the mortgage of 1874 was a 'purely usufructuary mortgage.' The learned Munsif expressed the opinion that either the attention of the Munsif who passed the decree in 1914 was not drawn to the provisions of the law or he 'by accident omitted to refer to them at the time of making the said order and pronouncing the said judgment.' The Munsif then argues that when a Court commits what in his opinion is a clear mistake of law, it must be held that the mistake 'had arisen from an accidental slip or omission' within the meaning of Section 152 of the Code.

4. I am clearly of the opinion that the learned Munsif is wrong and has misunderstood Section 152. I will assume for the moment that the Munsif is right in thinking that the mortgage of 1874 was a usufructuary mortgage and also that the direction contained in the decree dated 23rd April 1914, that in the event of non-payment the plaintiffs shall be debarred from all right to redeem the property, was wrong. The fallacy that underlies the reasoning of the Court below is that it assumes that Courts of law never make any mistake and that, if perchance a mistake is discovered in any judgment or order, that mistake must be taken to have arisen from an accidental slip or omission. There is no justification for such an assumption. Courts are not infallible and are liable to make mistakes and do make mistakes. Such mistakes, however, can only be corrected if the party aggrieved takes the steps prescribed by law within the time fixed. These steps are either an appeal or an application for review or an application for revision where such an application is permitted. The fact that a Court made a mistake and passed a wrong decree is no ground for holding that the mistake arose from an accidental

slip or omission. A Court's ignorance of the law and failure to consult books of law cannot, by any stretch of imagination, be brought within the words 'accidental slip or omission' which the Legislature has used in Section 152 of the Code. If the judgment dated 23rd April 1914, and the decree based thereon, were wrong, it was open to the plaintiffs mortgagors to appeal against that decree and to satisfy the appellate Court that the Munsif had erred in passing such a decree. If the view of the Court below is upheld, every mistake made by a Court can be brought within the expression 'accidental slip or omission', and it will never be necessary for anybody to file an appeal. Such an interpretation of Section 152 of the Code cannot be accepted. To use Section 152 in the manner in which the Court below has used it is to misuse it and to assume a jurisdiction which does not exist. I may also point out that it is not quite clear that the mortgage of 1874 was a usufructuary mortgage. The deed itself is not on the record. The Court below says in its order that 'a perusal of the pleadings of the parties on the record of Suit No. 391 of 1913' showed to it that the mortgage was a usufructuary mortgage. I have gone through the plaint of Suit No. 391 of 1913 and the written statement filed by Mt. Sahodra in that suit. All that was stated in the plaint was that the mortgagee was put in possession of certain plots (para. 2, Clause (d)). It was nowhere stated that the mortgage was a usufructuary mortgage.

5. The mere fact that possession was given to the mortgagee over certain property does not necessarily show that the mortgage was a usufructuary mortgage as defined in the Transfer of Property Act. There is nothing in the written statement of Mt. Sahodra which can justify the conclusion that the mortgage dated 22nd June 1874, was a usufructuary mortgage. I would further like to observe that it is open to grave doubt whether- even if the mortgage dated 22nd June 1874, was a usufructuary mortgage - the Court below was right in ordering the insertion in the judgment and the decree of the direction that 'the property mortgaged shall be sold.' In view, however, of the decision at which I have arrived with regard to the interpretation of Section 152 of the Code and the jurisdiction of the Court below, this question does not arise and it is not necessary to express any definite opinion on it. The order passed by the Court below was clearly without jurisdiction. Accordingly I allow this application for revision, set aside the order of the Munsif dated 7th September 1942, and dismiss the application filed by Ramjag Rai, Jit (or

Chet) Narain Rai and Salig Ram on 14th October 1941, asking for the amendment of the judgment and the decree dated 23rd April 1914. The applicant is entitled to his costs in both Courts.

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