

Ahmad-ullah Vs. Abdul Rahim

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Court : Allahabad

Decided On : May-03-1923

Reported in : (1923)ILR45All592

Judge : Grimwood Mears, C.J. and ;Piggott, J.

Appellant : Ahmad-ullah

Respondent : Abdul Rahim

Judgement :

Grimwood Mears, C.J. and Piggott, J.

1. The facts out of which this appeal arises are best stated in the judgment of the lower appellate court, dated the 24th of July, 191.9, where the essential question for determination is clearly set forth. That question is whether the making by a mortgagor of a deposit, under Section 83 of the Transfer of Property Act, ipso facto extinguishes the mortgage in spite of the fact that the mortgagee has refused to accept the deposit. In our opinion that question can only be answered as it was answered by the lower appellate court--the mortgage is not extinguished. The parties remain in the relationship to one another of mortgagor and mortgagee. It is for the mortgagor, dissatisfied with the action of the mortgagee in refusing to accept the money deposited in full, satisfaction of the mortgage, to bring a suit for the enforcement of his legal rights. Unless and until he does so successfully, the mortgage still subsists. There is some complication introduced into the present

case by the fact that the mortgage had been followed by a contract of tenancy, the mortgagee having left the mortgagor in possession as his tenant. We do not see that this circumstance in any way affects the principle we have just laid down, or the applicability of that principle to the parties whose case is now before us. The mortgagee is constructively in possession of the property through his tenant, who happens to be also his mortgagor. He is entitled to a decree for ejectment. If the claim for rent, which was also put forward by the plaintiff in the suit, had been on account of rent falling due after the deposit made on behalf of the mortgagor, it would have been necessary for the court to consider the operation of Section 84 of the Transfer of Property Act, No. IV of 1882. But the claim is on account of rent which fell due before that date. We think the decision of the lower appellate court was right and that it should not have been disturbed by the learned Judge of this Court. We allow this appeal, set aside the decree of the learned Judge of this Court and restore that of the lower appellate court. All costs in this Court will be paid by the defendant respondent.