**Puttu Singh and ors. Vs. Baldeo Singh and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/462093

**Court** : Allahabad

**Decided On :** May-29-1928

**Reported in** : AIR1928All667; 110Ind.Cas.407

**Appellant** : Puttu Singh and ors.

**Respondent** : Baldeo Singh and ors.

**Judgement** :

1. This is a defendants' appeal arising out of a suit for pre-emption. The plaintiff has filed cross-objections as regards costs. There is only one point that arises in this case, namely, whether the Court below was justified in deducting from the amount of the pre-emption money interest on a sum which was left in the hands of the appellants for payment of a prior mortgage. It appears that on the 5th December 1923, there was a mortgage executed by the vendors in favour of the appellants and others. Subsequently on the 16th February 1924, the sale-deed in question was executed by the mortgagors in favour of the defendants and other people for a sum of Rs. 9,500. The deed contained a specification that the present appellants would acquire only one-fourth of the property transferred. Rupees 1,680-15-0 which represented half the amount due on the mortgage of 1923, were left in the hands of the present appellants for discharge of the previous mortgage. As they themselves were the mortgagees, and admittedly this amount was due to them under the mortgage, there was a discharge to that extent automatically. The plaintiff filed the suit nearly a year after the sale-deed and the Court below has ordered that they should get credit for the amount of interest to the extent of Rs.

251-1-6 at the rate of 10 annas per cent. per mensem with six-monthly rests from the date of the execution of the sale-deed till the date fixed for payment in the decree 'by way of damages for the profits realized by the defendants.'

2. In our opinion the plaintiff cannot claim credit for profits prior to the date of the payment of the pre-emption money by himself. The defendants were entitled to appropriate the profits till the plaintiff became entitled by deposit of the pre-emption money to be substituted in their place. The amount which went to discharge the previous mortgage must, therefore, be paid by the plaintiff without any deduction of interest on it for the subsequent period. The appeal must accordingly be allowed.

3. As regards the cross-objections the Court below ordered that the defendants 6-10 against whom the claim was dismissed should bear their own costs and the plaintiff should have his proportionate costs. This was a proper order and we do not find that there is any mistake in calculation. The result, therefore, is that the cross objections are dismissed with costs and the appeal is allowed with costs. The defendants-appellants will get their costs from the plaintiff who will bear his own costs in both the appeal and the cross-objections.

4. Inasmuch as the plaintiff has in execution of the decree taken possession of the property he must pay interest on the sum of Rs. 251-1-6 at six per cent. per annum simple interest from the date of his taking over possession of the property till payment. As the amount has now increased we extend the time for payment till the 31st July next.

5. If the amount is not paid within the time fixed the suit shall stand dismissed with costs throughout.