

Babban Singh and ors. Vs. Ram Subhag Misir and ors.

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SooperKanoon Citation : sooperkanoon.com/464590

Court : Allahabad

Decided On : Mar-23-1950

Reported in : AIR1950All466

Judge : Malik, C.J. and ;Mushtaq Ahmad, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 62; U.P. Debt Redemption Act, 1940 - Sections 9(2); Debt Law

Appeal No. : First Appeal No. 334 of 1944

Appellant : Babban Singh and ors.

Respondent : Ram Subhag Misir and ors.

Advocate for Def. : J.N. Chaterji and ;R.B. Misra, Advs.

Advocate for Pet/Ap. : L.M. Roy, ;K.N. Gupta and ;A.P. Pandey, Advs.

Disposition : Appeal dismissed

Judgement :

Malik, C.J.

1. This is a mortgagees' appeal against a decree passed by the lower Court directing the redemption of a mortgage dated. 15th April 1925, without payment of any sum on the ground that the whole of the mortgage money had been paid off

out of the usufruct. The plaintiffs are some of the original mortgagors and the legal representatives of the others. The mortgage deed was executed in favour of some of the defendants and' the predecessors-in-interest of the others. The mortgage was for Rs. 6300 and in the mortgage deed it was provided that the income of the property would be taken by the mortgagees in full satisfaction of the interest and it was therefore that no rate of interest was mentioned in that document. The mortgage deed further provided that in case the mortgagees did not get possession of the property they would be entitled to claim interest at 2 per cent. per month.

2. The plaintiffs' case was that out of the sum of Rs. 6300 the mortgagees had paid only Rs. 5500. That case was, however, given up at the trial. The plaintiffs farther alleged that the usufruct of the property was more than sufficient to pay off the principal as well as the interest calculated at the rate given in the Debt Redemption Act, namely, $4\frac{1}{2}$ per cent. The defendants being the mortgagees in possession the burden lay on them to prove how much was due to them on the date when the application for redemption was filed. One of the defendants, Babban Singh, came into the witness-box. His evidence is very unsatisfactory and has been discarded as unreliable by the learned Judge. As a matter of fact, he admitted that he kept no accounts of sir and khudkasht, income, and that he could not give the income of the mortgaged property for the various years during which he had remained in possession as mortgagee. The learned Judge rejected the evidence of both the parties, and he was, therefore, left in this position that there was no material from which it could be found what was the correct income of the property. The learned Judge, however, held that, since the mortgagors had agreed to pay 2 per cent. per month as interest, in case the mortgagees were not given possession, the income of the property must have been above Rs. 1500 annually and he, therefore, held that the mortgagees had been over paid and nothing was due to them. It is not unusual that the rate, at which damage has to be paid, in case a party does not carry out the terms of the contract, is higher than the usual rate of interest payable if the contract is fulfilled in accordance with the terms thereof. Interest at the rate of 2 per cent. per month was the penalty imposed on the mortgagors if they failed to deliver possession of the property to the mortgagees, and that was bound to be higher than the rate that would have been

payable as interest in case the parties had agreed to borrow money not on an usufructuary mortgage, but on condition that interest would be paid on the sum borrowed and the mortgagee would have to account for the profits of the property. In the year 1925, when the money was borrowed, the usual rate of interest in this province was 12 per cent. per annum. At any rate, that was the rate which the Courts considered reasonable and at which decrees were passed by this Court as well as by their Lordships of the Judicial Committee. Calculating, however, even at that rate, the income of the property on the date of the mortgage must have been near about Rs. 756. The mortgagees, at the rate given in the Debt Redemption Act, are entitled to interest only at the rate of $4\frac{1}{2}$ per cent., which would work out to Rs. 283-8-0 per annum only, leaving a margin of Rs. 472-8-0, that would go towards the payment of the principal. The suit was filed in 1941, after a period of 16 years. During this period, therefore, the mortgagees got a sum of Rs. 7560 towards principal, which is much more than the amount lent by them, namely Rs. 6300. The result, therefore, is that the decree passed by the lower Court directing redemption without payment of anything must be upheld.

3. The appeal has no force and is dismissed, but as the respondents are not represented we make no order as to costs.