

Ram Gopal Vs. Lachhman Das and ors.

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Court : Allahabad

Decided On : May-12-1938

Reported in : AIR1938All423

Appellant : Ram Gopal

Respondent : Lachhman Das and ors.

Judgement :

Allsop, J.

1. The following question has been referred to this Bench:

Where there is nothing in the mortgage deed to indicate that the mortgagees advanced the money otherwise than in their individual capacities and where after the death of one of the mortgagees the mortgagor makes a deposit under Section 83, T.P. Act of the full amount due to the account of the surviving mortgagee and to that of the estate of the deceased mortgagee expressly or by necessary implication, impleading his sons as his heirs and it is subsequently found that one of the sons had no right to any part of the mortgage money, did interest cease to run from the date of the deposit or continue to run however bona fide the action of the mortgagor might have been?

2. The suit out of which this reference has arisen was one for the sale of property on the basis of a mortgage dated 11th August 1921 executed by Abdul Hakim in

favour of Jhunni Lal and his son Nannhe Mai. Abdul Hakim transferred his interest to Ram Gopal who made a deposit under Section 83, T.P. Act on 13th August 1928. At that time Jhunni Lal was dead. He had left four sons, Mohan Lal, Nannhe Mal, Lachhman Das and Ram Narain. Ram Gopal in his application stated that Jhunni Lal was dead and he mentioned that these four persons were his sons. He impleaded them as opposite parties and prayed that the money deposited should be paid to them. Nannhe Mal, Lachhman Das and Ram Narain claimed the amount deposited on the allegation that they were members of a joint Hindu family with Jhunni Lal and that Mohan Lal had separated from the family and had no interest left in the mortgage. Mohan Lal maintained that he was entitled to one-fourth of the amount deposited. The result was that the deposit was never withdrawn by the mortgagees. Ram Gopal eventually took the money out of Court on 17th December 1929 and later the suit for sale was instituted by the two sons of Nannhe Mai who by that time was dead and by Lachhman Das and Ram Narain. 'We should perhaps mention in order to avoid confusion that Lachhman Das is also known as Chhote Lal because that is the name given in the application made by Ram Gopal. The question at issue was whether Ram Gopal was bound to pay interest on the mortgage money after the date of his deposit, i.e. after 13th August 1928. We must however emphasize that the question which has been referred to us is in general terms and we are not called upon to express any opinion upon the point whether the deposit by Ram Gopal was or was not one to the account of the estate of the deceased mortgagee. We have to answer the question put to us on the assumption that there was a deposit expressly or by necessary implication to the estate of the deceased mortgagee.

3. The reference is made because it appeared to the Judges comprising the Bench that there was a conflict of decisions between the cases in *Ganeshi Lal v. Rohni Rukumdhuj Prasad Singh* : AIR1928 All311 and *Ram Sumran v. Sahibzada Bijai Partab Narain Singh* (1885) A.W.N. 328. In the latter case the appellant, the mortgagor of landed property to the Ram of Sitosi, deposited the full redemption money in Court, payable to her legal heirs or representatives; and he recited in his application the names of the persons who would be so under the will set up by them as the Rani's last testamentary act in respect of the property, of which the appellant's mortgaged estate was a part. He also set out the names of the

respondents, who claimed the estate by right of inheritance, and denied the validity of the will. The Court paid the money deposited to one of the executors under the will and it was held that the deposit was a perfectly good one and that the mortgagor had discharged his liability. The learned Judges decided that the executors and the respondents could settle their dispute between themselves. In *Ganeshi Lal v. Rohni Rakumdhuj Prasad Singh* : AIR1928 All311 as far as we can discover from the judgment, the deposit was made to the account of the two sons-of the deceased mortgagee. It was found that the rule of primogeniture applied to the mortgagee's family and that the elder son was alone entitled to recover the mortgage money. In these circumstances, it was-held that the deposit under Section 83 was not; a valid deposit which would entitle the mortgagor to withhold interest on the mortgage debt. In the view that we take of the question before us, it appears to us that there is no necessary conflict between these two decisions. We have been referred) to a number of other cases. One of these is *Debendra Mohan Rai v. Sona Kunwar* (1901) 26 All. 291 where the deposit was made not only to the account of the mortgagee' but also to the account of the mortgagee's pleader. It was there held that the deposit was not a good one.

4. Another case is that in *Madhavi Amma v. Kunhi Pathumma* (1900) 23 Mad. 510. The judgment in that case was a very; short one, but it was held that the mortgagor could not claim the benefit of Sections 83 and 84, T.P. Act, where he deposited the mortgage money to the credit of persons. who were not entitled to it in addition to persons who were entitled to it. The reason given was that the persons really, entitled to the money could not draw it. Then there is the case in *Balusami Aiyar v. Krishnaswami Aiyar* (1924) 11 A.I.R. Mad. 559. In that case the mortgagor when depositing, the amount in Court requested the Court to decide which of the two counter petitioners was entitled to receive the amount. The Court refused to make any decision and it was held that the Court was wrong. In *Subba Rao v. Poonammal nadathi* (1924) 11 A.I.R. Mad. 453 a deposit was one to the account of all the heirs of the mortgagee and of a sub-mortgagee from one of them. The right of the sub-mortgagee was-questioned by the mortgagees who were not concerned in the sub-mortgage. It was-found that the money was due to the sub-mortgagee and at the same time it was held that the deposit was valid.

5. In Harihar Bakhsh Singh v. Sheo Singh (1916) 3 A.I.R. Oudh 292, Thakur Sheo Singh, the mortgagor, made a deposit under Section 83, T.P. Act. In his application accompanying the deposit he said that the deed had been originally in favour of Hakim Sheo Dayal and Pandit Sheo Prasad and that Hakim Sheo Dayal alone had transferred the right under it to Harihar Baksh. He asked that the amount deposited should be paid to Harihar Baksh alone. The learned Subordinate Judge refused to pay the money to Harihar Bakhsh upon the ground that he was not alone entitled to it. In a subsequent suit for redemption, it was admitted by Pandit Sheo Prasad that Harihar Bakhsh alone had the right to recover the money. The question arose whether Harihar Bakhsh was entitled to interest after the date of the deposit and it was held that he was not so entitled because it was the fault of himself and the co-mortgagees that he was not able to recover the amount paid into Court. In Nagathal v. V. Arumugam Pillai (1923) 10 A.I.R. Mad. 354 it was held that interest ceased to run from the date of the deposit when the amount deposited was not drawn because of quarrels among the heirs of the mortgagees. The judgment in this case however is very short and it is not quite certain what the facts were. Finally in Vasava Menon v. Kelu Achan : AIR1926 Mad1087 it was held that a mortgagor could deposit the money in Court so that the Court could decide and pay the amount to the person who might be entitled if there was a dispute among the co-mortgagees as to who was entitled to receive the money and give a valid discharge.

6. We think on a proper view of the matter that all these rulings can be reconciled and that the real solution of the problem before us is to be found in Sections 83 and 84 T.P. Act. Section 83 of the Act lays down that the mortgagor may deposit the amount due on the mortgage in Court to the account of the mortgagee and that the Court shall thereupon cause written notice of the deposit to be served on the mortgagee. It also allows the mortgagee to apply for and receive the money deposited if he is willing to do so. Section 84 is in the following terms:

When the mortgagor or such other person as-aforesaid has tendered or deposited in Court under 8. 83 the amount remaining due on the mortgage, interest on the principal money shall cease from-the date of the tender or in the case of a deposit-when no previous tender of such amount has been, made, as soon as the

mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, and the notice required by Section 83 has been served on the mortgagee....

7. The important points are that the deposit must be in favour of the mortgagee and that interest shall cease to run as soon as the mortgagor has done all that has to be done by him to enable the mortgagee to take such amount out of Court. Section 59(a), T.P. Act, says that the term mortgagee shall be deemed to include persons deriving title from a mortgagee. When the original mortgagee has died the term mortgagee means the person who is entitled to recover the mortgage money for the time being. That person may be the heir or successor in interest of the mortgagee or it may be an executor or administrator or a person holding a succession certificate in respect of the debt. It seems to us that a mortgagor, if he does not know who the legal representative or successor in interest of the mortgagee is, may deposit the money in Court with a request that the Court shall pay it to the person who is entitled to recover it. If he does that, he has done all that is required of him to enable that person to recover the money. If there is any dispute between rival claimants it is the business of the person properly entitled to take steps to satisfy the Court that he is the person to whom the money should be paid. It would be most unfair to deprive the mortgagor of his right to redeem the mortgaged property merely because there was a dispute between a number of people about the right to succeed to the interests of the mortgagee. Those people might take a considerable time in having their disputes settled and it might be years before the mortgagor was able to know to whom the money should be paid. For all that time he would be deprived of the power which is expressly given to him by statute to redeem the property in a summary way by depositing the amount due in Court. Although he might be prepared to pay the money he would still be compelled to pay interest upon it. On the other hand, it is always open to rival claimants to the estate of the mortgagee to settle with little delay in a summary manner who is to be allowed to recover the money on behalf of the estate. An application can be made for a succession certificate and if the questions involved are complicated and difficult the Court will issue a certificate after a summary inquiry to the person who is prima facie best entitled and will if necessary take security from that person for payment to others who ultimately may be found to be

entitled to the money or some of it. All that the mortgagor is required to do is to make the money available to the person who is entitled to get it.

8. The apparent discrepancies in the various uses which we have quoted are due to the various circumstances in which the decisions were given; if the mortgagor makes a deposit to the account of certain named persons the Court has to pay the money to those persons or to nobody at all. In these circumstances, if among those persons are included some who are ultimately found to have no title to the money it is obvious that the mortgagor has himself prevented the rightful claimants from recovering the money due to them. On the other hand, if the mortgagor states in the petition accompanying his deposit that he is paying the money to the account of the estate of the deceased mortgagee and asks the Court to pay that money over to anyone who can establish his title to it, it seems to us that he has done all that is required to do. It would not be necessary for the Court in which the money was deposited to make any enquiry or come to any decision upon the titles of the persons claiming. The Court would simply say that any person who could produce a succession certificate or other authority to withdraw the money might withdraw it. We need hardly say of course that it would be necessary that notice should have gone to those who were entitled to recover the money although it might also have gone to others who were not so entitled. In *Ram Sumran v. Sahizada Bijai Partab Narain Singh* (1885) A.W.N. 328 the mortgagor deposited the money and stated all the facts and requested the Court to pay the money to the person to whom the Court thought that it should be paid. In these circumstances in our opinion the deposit was quite valid as the Court held. On the other hand, in *Ganeshi Lal v. Rohni Rakumdhuj Prasad Singh* : AIR1928 All311 the deposit was in the name of both the sons that is, in the name of two definite men and in the circumstances it was impossible for the Court to pay the money only to one of them. The result was that the true claimant, i.e. the elder son, was debarred from withdrawing the money owing to the action of the mortgagor himself. In these circumstances again we think that the decision of the Court was right and that the deposit was not valid. We think that all the other rulings which we have quoted could be explained on the same lines.

9. In Harihar Bakhsh Singh v. Sheo Singh (1916) 3 A.I.R. Oudh 292 for instance, the mortgagor did all that was required of him and it was entirely the fault of the person entitled that he was not able to recover the money from the Court. Our answer to the question put to us is that in the circumstances set forth in the question, interest ceased to run from the date of the deposit (or possibly from the time when the notice required by Section 83 had been served on those entitled to recover the money). On the other hand, if the deposit was made to the account of certain persons named and not to the estate of the deceased mortgagee in such a way that only the persons named could recover the amount deposited, interest would not cease to run if some of the persons named were not entitled to the money. The question of the nature of the deposit has not been referred to us and we express no opinion upon it.