

Jit Singh and ors. Vs. Shah Munir and ors.

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Court : Allahabad

Decided On : Dec-06-1933

Reported in : AIR1935All155

Appellant : Jit Singh and ors.

Respondent : Shah Munir and ors.

Judgement :

Mukerji, J.

1. The plaintiff-respondent, Shah, Munir, brought the suit out of 'which this appeal has arisen for recovery of a certain amount of money as arrears of rent due to his (Shah Munir's) assignors, Jumman and Minnat Ali, defendants 4 and 5, to the suit. It was alleged in the plaint that the first three defendants to the suit were sub-tenants of the principal tenants, who were holders of occupancy rights.

2. The defence of the first three defendants was that they were not tenants, but held as mortgagees from the principal tenants. They produced in support of their allegation an unregistered mortgage-deed, but this was rejected and was not allowed to be put into evidence on the ground that the deed was not registered. Although an unregistered deed could not create a mortgage the mortgage would be created by delivery of possession. It is common ground that the first three defendants are in possession. The question is whether they are in possession as sub-tenants of the defendants 4 and 15, or as their mortgagees. The document,

which was not admitted into evidence, would have shown, if duly proved, the nature of the possession of the defendants 1 to 3.

3. There is abundant authority for holding that the document was admissible into evidence see for example : Appanna v. Vnkatasami 1924 Mad. 292, following Varada Pillai v. Jevaarithnammal 1919 P. C. 44 and then Kesri Singh v. Channo 1924 All. 837. The learned District Judge on appeal by the defendants also held that the document was inadmissible in evidence. As I have already mentioned, this view is wrong.

4. In the result I allow the appeal, set aside the decrees of the Courts below and remand the suit to the Court of first instance through the lower appellate Court and direct it to receive the document, if tendered by the defendants 1 to 3 into evidence, to allow the said defendants to prove the document and then to proceed to decide the case de novo. Costs here and hitherto will abide the result.

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