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Court : Allahabad

Decided On : Aug-09-1934

Reported in : AIR1934All950; 153Ind.Cas.607

Appellant : Jassa

Respondent : Dhani Ram and anr.

Judgement :

Kendall, J.

1. This is an application for the revision of an order of the Judge of the Small Cause Court, Farrukhabad. The plaintiff applicant sued on the basis of a simple money bond for Rs. 100 the principle sum being repayable after three years with interest at the rate of 2 per cent, per menam. The money was said to be borrowed to liquidate decrees for arrears of rent which were in existence against the executants of the bond, namely, Mt. Dulari and Dhani Earn. Mt. Dulari having died, the plaintiff nominated her legal representative to take her place, but the trial Court found that the nominee was not the legal representative and counsel for the plaintiff-applicant, although he disputes this decision, informs me that if he succeeds on the merits he is willing to accept a decree against Dhani Earn only as he was one of the executants of the bond. The Court has dismissed the suit on the ground that the transaction embodied in the bond is part of the same transaction as that embodied in a lease executed in favour of the plaintiff, and that the two

documents together constitute a usufructuary mortgage of a tenancy holding, which is therefore void and unenforceable. I have described above the consents of the money bond. The lease is, if considered in itself, a valid lease of an occupancy holding, as it only extends for five years. It reserves rent at the rate of Rs. 50 per annum, and provides that part of the sum payable for rent shall be credited towards the interest of the money bond.

2. I have been referred to a decision of a Single Judge of this Court in the case of Chhotey Lal v. Mohanian 1930 All. 375 in which it has been held in very similar circumstances-the lease being in itself a valid lease, and the rent being just sufficient to pay the interest on the money bond that the transaction did not amount to a usufructuary mortgage of an occupancy holding, as there had been no transfer of an interest in specified immovable property for the purpose of securing payment of money advanced. In the present case the executants of the bond were clearly in need of ready money, but they also provide in the lease for a small income, in addition to the amount for interest that they pay on the bond. It is true that the plaintiff under the lease is not liable to be ejected until the end of five years, and that he therefore shows himself to be for two years in possession after the date on which the money advanced under the bond becomes payable. But I do not think it would be correct to say that the possession of the plaintiff is for this reason security for the payment of money. Supposing for instance that the debtors refused or neglected to pay the debt for three years after the date fixed for the repayment of the money that is to say for three years after 14th May 1932. The creditor's claim would by the end of this period become barred by the law of limitation. But the creditor would have become liable to ejectment one year at least before the expiration of that period, and it is therefore difficult to hold that the five years lease is a real security for the payment of the loan. The decision of the trial Court that the transaction was necessarily void and unenforceable is in the circumstances incorrect and as the money was undoubtedly advanced to the executants of the bond, it is only just that they or the survivor of the two should be made to pay. I therefore allow the application, which has not been opposed in this Court, set aside the decree and order of the trial Court and direct that the plaintiff's suit be decreed with costs in both Courts against Dhani Earn but without future interest, as the rate of interest provided in the bond is unusually high.

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