

Baidram and anr. Vs. Tika Ram

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Court : Allahabad

Decided On : Jan-03-1917

Reported in : AIR1917All189; 39Ind.Cas.528

Judge : Piggott and ;Walsh, JJ.

Appellant : Baidram and anr.

Respondent : Tika Ram

Judgement :

Piggott, J.

1. This in an appeal by the defendants in a suit for redemption. The facts as finally ascertained, after an order of remand by this Court, may be stated as follows: In the month of March 1875 there was a mortgage by the plaintiff to the defendants, under which possession was agreed to be given of three items of property, namely,

(1) a plot of land, forming part of an occupancy holding, now represented by field No. 385 in the village map,

(2) a number of scattered plots appertaining to the same holding, and

(3) a residential house. The consideration for the mortgage was an advance of Rs. 99, so that the mortgage-deed was not required by law to be registered. It was a

document of which registration was optional; but as a matter of fact it was registered. The mortgagee, however, did not enter into possession of all the properties specified in the deed. He never took possession of the residential house or of the scattered plots; but of the property specified in the deed he took possession only of plot No.

385. This happened in the month of July next following the execution of the mortgage-deed. In that very same month the mortgagee took possession of another plot, now No. 1248 in the village map, forming part of the same occupancy holding and representing an area of land roughly equivalent to the total area of the scattered plots comprised in the original mortgage-deed. The possession thus obtained over plot No. 1248 was mortgage possession. It was recognised as such in the entries made in the village papers at the time, and it has been found by the Courts below to have been mortgage possession and nothing else. In the plaint as drafted, it is alleged that these transactions of the month of July 1875 were the result of an oral agreement between the parties, and that it was a part of the said agreement that the possession of the defendants over plot No. 1248 should be in consideration of the original loan of Rs. 99 advanced under the contract of the month of March previous. The plaintiff paid into Court a sum of Rs. 99 and claimed redemption of the two plots Nos. 385 and 1248, on the ground that he, having repaid the entire mortgage-debt in respect of which the defendants were holding those two plots, was entitled to recover possession over the same. On these facts it is clear that the equities of the case are entirely in favour of the plaintiff. The mortgage-debt has been satisfied and the plaintiff is entitled to recover possession.

2. The decision of the lower Appellate Court is, however, contested before us in second appeal and, as it seems to me, substantially upon two grounds, which require to be considered separately, One is that the facts as above slated have been ascertained in the Courts below by the admission of evidence which the plaintiff was not entitled to tender, by reason of the provision of Section 92 of the Evidence Act (I of 1872). The other is that on the plaint as drafted, the plaintiff was not entitled to claim redemption of plot Nos. 1248, because the paragraph of the plaint in which the facts are set forth is so worded as distinctly to allege that the

defendant's mortgagee possession over this plot was the result of an oral agreement in modification of the terms of the registered mortgage-deed of March 1875. I do not think that there is any real substance in the latter of these two points. The plaintiff based his cause of action on the broad facts that the defendants were in mortgagee possession over the two plots in suit, that the mortgage debt was no more than Rs. 99, and that there had been a valid tender on his part of the whole of this mortgage-debt. In reciting the facts and circumstances under which the defendants came to be in possession of these two plots, the plaintiff may have expressed himself clumsily from a legal point of view, and laid himself open to the objection taken with regard to the provisions of Section 92 of the Evidence Act; but it does not seem to me that there can be any mistake in substance as to the nature of the relief claimed in the plaint or the grounds upon which that relief is sought. It is not correct to say that the suit as brought is one for redemption of the mortgage of March 1875 and nothing else. It is a suit for recovery of possession by redemption of an existing mortgage, in respect of two specified plots, based upon the recital of certain facts regarding the manner in which the mortgagees' possession over those two plots commenced. There remains the more important question as to the admissibility of the evidence from which the facts have been ascertained. It must be strictly borne in mind that the question is merely one of admissibility of evidence. There is nothing in the proceedings between the parties in the month of July 1875 obnoxious to the provisions of the Transfer of Property Act. The plaintiff was perfectly entitled to mortgage plot No. 1248 to the defendants by delivery of possession over the same, provided the amount of the mortgage-debt thereby secured did not exceed Rs. 100. The question is whether the plaintiff is trying to prove a subsequent agreement to rescind or modify the contract embodied in the registered instrument of March 1875. If the question now before the Court were as to the right of the defendants to mortgagee possession over the residential house or the scattered plots specified in the registered deed, it is possible that different considerations would arise. I think, however, that the plaintiff was clearly entitled to lead evidence to prove two facts, (1) that the possession of the defendants over plot No. 1248 was that of mortgagees and had never been adverse to himself, and (2) that the right of mortgagee possession was terminated by the payment of Rs. 99 which

had been duly tendered by him. on these grounds I would dismiss this appeal with costs, including fees on the higher scale.

Walsh, J.

3. I agree. I am glad that I referred the case to a bench of two Judges. But I think the argument has at any rate cleared the ground. I would only add that this case seems to me an excellent illustration of two principles, namely, that equity when clearly ascertained is stronger than the written word, so to speak, of the common law or codified law and, secondly, that scientific pleadings, that is to say, an accurate statement of the case in its inception is essential for ascertaining the real nature of the cause of action. Half the trouble in the case was caused by the way in which the case was originally framed. One cannot find any great surprise that the Munsif originally took the view which he did.

By the Court.--The appeal is dismissed with costs, including fees on the higher scale.

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