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Court : Allahabad

Decided On : Jun-17-1925

Reported in : AIR1926All164

Appellant : Babu Ram

Respondent : Ram Sarup and ors.

Judgement :

Sulaiman, J.

1. This is an appeal by defendant 2 arising out of a suit brought on the basis of a registered deed dated 25th October 1921, executed by defendant 1 in favour of the plaintiff. Under this deed a grove and the sugarcane crops on 10 bighas of land were hypothecated. Defendant 2 was impleaded on the ground that he had taken possession of the crops and crushed them. In the plaint the plaintiff sought no relief against the grove of the mortgagor but stated that a separate suit would be filed later if necessary.

2. Defendant 2 denied the allegations of the plaintiff in general but the specific pleas taken by him were that he had not crushed the crops at all and that he was not in law liable to the plaintiff's claim.

3. The Court of first instance framed three issues: (1) as to the execution of the bond in suit, (2) as to whether sugarcane crops were pressed at the pressing

machine of defendant 2s, and (3) as to the effect of the release of the grove by the plaintiff. It found the execution proved but found that it was not established that the sugarcane crops had been pressed at the appellant's pressing machine. It, therefore, considered it unnecessary to decide the issue 3 and decreed the claim as against defendant 1 only and exempted defendant 2. On appeal the learned District Judge has granted the plaintiff a decree for Rs. 200 against defendant 2 also.

4. It is unfortunate that the issues that were framed were not happily worded. The question was not merely whether the sugarcane crops had been pressed at the pressing machine of defendant 2 but the question was whether defendant 2 had appropriated the crops or in any other way deprived the plaintiff of the use of the crops. The learned vakil for the appellant contends that the finding of the learned Judge that the crops were pressed at the defendant's machine is not sufficient because it may very well be that after they were pressed the sugarcane juice was taken back by the mortgagor. I think, however, although the issue was not happily worded it was understood by both parties that a finding that the crops were crushed at the defendant's press would amount to a finding that they were appropriated by him. This is manifest from the fact that the mortgagor is a cultivator in sugarcane crop and the defendant is a person who presses sugarcane crop. There is, therefore, no force in this contention.

5. It is next contended that the learned Judge should not have passed a decree without recording a finding that the defendant had notice of the mortgage. There can be no doubt, that under Section 3, T.P. Act, growing crops are not immovable property, and, therefore, that Act does not apply to this case. Further when the mortgage was made these crops were not in existence. The deed originally amounted to mere agreement to hypothecate the further crops when they do come into existence. Such an agreement was valid, as was pointed out by the Calcutta High Court in the case of *Misri Lal v. Mazhar Hossain* (1889) 13 Cal 262. But as soon as the crops grew, the hypothecation became complete and attached to the crops and created an equitable interest in the mortgagee. Such a charge could be enforced against all subsequent transferees with notice but would _be of no avail against a transferee without notice. This was clearly laid down by a Bench of this

Court in the case of Bansidhar v. Sant Lal (1888) 10 All 133 which has been followed since in several cases. Furthermore, ordinarily speaking, cut crops cannot be easily identified and a person who presses them does not necessarily know that they are the very crops which had been previously mortgaged to any other person. In such cases proof of express notice would certainly be necessary. As there was no finding by the District Judge I have, instead of remanding an issue, examined the record. I have already mentioned that in the written statement defendant 2, never took the plea that he was a bona fide transferee for value without notice or that he had pressed the crops in good faith or returned the juice to the mortgagor. His mukhtar Ram Gopal was produced on his behalf who stated that on receipt of a notice from the plaintiff that Pershadi's crops were mortgaged to him his master did not press the crops at his machine. It is obvious, therefore, that the only question that remained after that statement was whether the crops had or had not been pressed. The notice of the mortgage was admitted on behalf of the defendant. This explains the absence of any issue or finding by the Court below.

6. Under these circumstances, I uphold the decree of the learned Judge and dismiss this appeal with costs including fees on the higher scale.

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