

Daya Ram Vs. Thakuri

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Court : Allahabad

Decided On : Mar-31-1924

Reported in : AIR1924All668; (1924)ILR46All622; 83Ind.Cas.21

Judge : Daniels, J.

Appellant : Daya Ram

Respondent : Thakuri

Judgement :

Daniels, J.

1. This is an application for revision of a Small Cause Court decree. The facts are that the plaintiff is the usufructuary mortgagee of an occupancy holding under a mortgage executed in the year 1919. His case is that he has been dispossessed by a third party and, therefore, under a covenant contained in the mortgage deed he claims to recover the mortgage money from the mortgagor. It has been repeatedly held that a mortgage of an occupancy holding under the present Tenancy Act is illegal. The court below refers to two such rulings, the latest being that in Har Prasad Tiwari v. Sheo Gobind Tiwari (1922) I.L.R. 44 All. 486. That ruling entirely covers the present case. The court refused to recognize the transaction in any way, even by allowing a suit for the mortgage money on the basis of a personal covenant contained in the mortgage. The same principle has been laid down with reference to another class of suits in Vilayat Husain v. Misram

(1923) I.L.R. 45 All. 396:

Once it is established that the parties are in pari delicto, the courts will not assist an illegal transaction in any respect, that is, the person who asks the court to do something will fail.

2. The applicant relies on the case of Jarbandhan v. Bddri Narain (1923) I.L.R. 45 All. 621, but that case proceeds on special facts and is clearly distinguishable.

3. The application for revision fails and it is accordingly dismissed with costs.

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