

Kanhai Vs. Tilak and anr.

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Court : Allahabad

Decided On : Jun-21-1912

Reported in : 16Ind.Cas.42

Judge : Chamier, J.

Appellant : Kanhai

Respondent : Tilak and anr.

Judgement :

Chamier, J.

1. This was a suit by the appellant for possession of lands mortgaged to him by the first respondent in August 1907; in the alternative, he prayed for a decree for the mortgage-money against the mortgagor personally. It is now conceded on behalf of the appellant that he is not entitled to a decree for possession of the property in-as-much as part of that property is an occupancy-holding. The only question is whether he is entitled to a money-decree against the mortgagor. It appears to me that the case is covered by the decisions in Murlidhar v. Pem Raj 22 A. 205 and Dipan Rai v. Ram Khelawan Rai 7 A.L.J. 330 : 32 A. 383 : 5 Ind. Cas. 557. To accede to the appellant's request would be equivalent to enforcing an agreement part of the consideration of which was unlawful. Under Section 24 of the Contract Act, the whole contract must be considered to be void. As the appellant was not entitled to claim a decree for money except on failure on the part

of the first respondent to perform an unlawful agreement, the appellant has no--right to claim a decree for money against the first respondent. The appeal is dismissed with costs including fees on the higher scale.

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