SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Dalip Singh Vs. Tilak Singh and anr.

Dalip Singh Vs. Tilak Singh and anr.

SooperKanoon Citation : sooperkanoon.com/476777

Court : Allahabad

Decided On : Nov-18-1926

Reported in : AIR1927All270a

Appellant : Dalip Singh

Respondent : Tilak Singh and anr.

Judgement :

Iqbal Ahmad, J.

1. This is a plaintiff's appeal and arises out of a suit for redemption of a mortgage, dated the 20th of April 1909, executed by the plaintiff in favour of Defendant No. 1 and father of Defendant No. 2 for a sum of Rs. 80. The property mortgaged was Plot No. 115 of village Kharawan. One Mt. Rajjo was admittedly an occupancy tenant of the said plot. She, by a deed of gift, dated the 2nd of October 1888, transferred the said plot to the plaintiff-appellant. The plaintiff's case was that the defendants without any right were denying the plaintiff's title to redeem the mortgage.

2. The defence to the suit was, that the deed of gift executed by Mt. Rajjo was never given effect to, and that the plaintiff was never in possession of the plot in dispute in his own right, but was in possession only as a manager of Mt. Rajjo. It was further alleged by the defendants, that they never got possession of the plot in dispute under the mortgage executed by the plaintiff, and as such the plaintiff was

not entitled to a decree for redemption of the mortgage.

3. The trial Court held that the deed of gift executed by Mt. Rajjo had been acted upon, and that the defendants entered into possession of Plot No. 115 in their capacity as mortgagees under the mortgage-deed executed by the plaintiff, and as such the mortgagees cannot deny the title of the plaintiff, and are bound to restore possession of the mortgaged plot on payment by the plaintiff of the mortgage-money. On these findings the trial Court passed a decree for redemption, in terms of relief (a) prayed for in the plaint, in favour of the plaintiff.

4. The lower appellate Court, on appeal by the defendants, has reversed the decree of the trial Court and has dismissed the plaintiff's suit. That Court has held that the finding of the trial Court that the defendants-appellants got possession in 1909 under the mortgage-deed executed by the plaintiff was correct, and that the defendants were in possession since the date of the mortgage. But it held, that the plaintiff's failure in the attempt to have his name entered against the plot in dispute in the revenue papers on the objection of the zamindar, was tantamount to an ejectment of the plaintiff from the plot in dispute by the zemindar, and that the only remedy open to the plaintiff-appellant was to bring a suit under Section 79 of the Tenancy Act, for the recovery of the possession of the holding, within six months from the date of the order of the revenue Court refusing to record his name as against the plot in dispute, and the plaintiff having failed to institute such a suit, his right to the plot as an occupancy tenant had been extinguished. In this view it held that the tenure that was mortgaged has now ceased to exist and as such a decree for redemption of the tenure mortgaged could not be passed in favour of the plaintiff.

5. I am unable to agree with the learned District Judge, It is a settled proposition of law that

Where the mortgagee, is let into possession by the mortgagor the former is estopped from denying the title of the latter at the commencement of his possession, though he is not debarred from showing that his title has since determined. Vide Nakchedi Bhagat v. Nakchedi Misr [1896] 18 All 329

6. That being so, the defendants cannot be heard to deny the title of the plaintiff-appellant to the plot in dispute as an occupancy tenant on the date of the execution of the mortgage, and it must be presumed that on that date the plaintiff was an occupancy tenant of the plot in dispute. The only question that then remains for decision is as to whether the title of the plaintiff to the plot in dispute, as an occupancy tenant, has or has not been extinguished, since the date of the mortgage. The mortgage was a usufructuary mortgage and on the findings of the lower appellate Court, from the date of the mortgage, the defendants have been in possession of the plot mortgaged. Obviously since the date of the mortgage, the plaintiff was never in actual possession of the plot, and, therefore, it is impossible to hold that he was ever ejected by the zemindar. The successful objection by the zemindar to the application filed by the plaintiff in the revenue Court, after the death of Mt. Rajjo, to have his name entered as an occupancy tenant cannot be tantamount to an ejectment of the plaintiff from the plot in dispute. If the plaintiff succeeds in the present suit and gets into possession of the plot, and the zamindar thereafter brings a suit for ejectment against the plaintiff, it will be open to the plaintiff, in that suit to prove that he is an occupancy tenant, notwithstanding the order of the Revenue Court declining to record his name as a tenant of the plot in dispute. I, therefore, hold that, if the plaintiff was an occupancy tenant of the plot in dispute on the date of the execution of the mortgage and this assumption must be made against the defendants to the present suit-he has not lost his occupancy rights since that date. In my judgment the decree of the trial Court was correct and ought to be restored.

7. I accordingly allow this appeal, set aside the decree of the lower appellate Court and restore the decree of the Court of first instance with costs in all Courts.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com