

Ram Narain Vs. Gobind Pershad

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Court : Allahabad

Decided On : May-03-1915

Reported in : AIR1915All313; 29Ind.Cas.289

Judge : Piggott, J.

Appellant : Ram Narain

Respondent : Gobind Pershad

Judgement :

Piggott, J.

1. This is an execution first appeal, and the question raised by it is as to the interpretation of a conditional decree for redemption, dated the 13th of January 1908, and the effect of an order and decree of this Court, dated August 1st, 1910, disposing of an appeal from the said decree. It is necessary, first of all, to be quite sure what interpretation it would have been necessary to put on the decree of the first Court if it had never been modified in any way by this Court. The suit was for redemption of four mortgages and the mortgagee 'was in possession, of the property. He was entitled under the terms of his mortgages to compound interest at Re. 1 per cent, per mensem, with six-monthly rests, but 'was also liable to account for the profits of the mortgaged property in his hands. A reference to the judgment of the first Court makes it clear that the intention of that Court was simply to give effect to the mutual rights and liabilities of the parties under their contract of

mortgage up to the 13th of June 1908, the date fixed for payment. The decree was unfortunately worded. In referring to the profits of the mortgagee in possession the words used in the decree were as follows: 'The defendant shall be entitled to get any further sums that may be found due to him with reference to the actual realizations up to the date of payment, together with interest at the contractual rate at Rs. 1 per cent, per mensem.' I must lay stress 'on the fact that these words, as they stand, are scarcely susceptible of any reasonable interpretation. Either the word 'defendant' has been used by an oversight for the word plaintiff', or the words entitled to get' have been used when the Court intended to say 'liable to account for.' It is because of the ambiguous and unsatisfactory wording of this paragraph of the decree that I felt justified in referring to the operative portion of the judgment in order to arrive at the mind of the Court. Reading the decree and the judgment together, I have no real doubt as to what the first Court intended to do, and must be understood to have done. The date fixed for payment was the 13th of June 1908. Up to that date the defendant-mortgagee was to be entitled to receive interest at the contractual rate, namely, one per cent, per mensem, compound interest, with six-monthly rests, but on the other hand he was to be liable to account for profits received by him by virtue of his possession over the mortgaged property, these profits being deducted from interest. After the 13th June 1908, in place of the right to receive the contract rate of interest and liability to account for the profits received, the Court allowed the defendant mortgagee simple interest at eight annas per cent, per mensem. I have no doubt that the Court of first instance did not intend that either the right to receive interest at the contract rate, or the liability to render account for rents or profits, should continue beyond the 13th June 1908; nor do I find anything in the decree which, in my opinion, requires to be interpreted as extending either this right or this liability beyond the date fixed for payment. Now comes the other question, as to the effect of this Court's decree of August 1st 1910. The appeal before this Court was by the plaintiff's mortgagors. That appeal was dismissed and the decree of the first Court affirmed; but the time for payment was extended to a period of six months from the date of this Court's decree, that is to say, to the 1st of February 1911. In my opinion the effect of this extension must be considered to be a substitution of this date, namely, the 1st of February 1911, for the 13th June 1908 in the decree of the

first Court. The defendant-mortgagee will be entitled to interest at the contract rate upto the extended date thus fixed for payment and will be liable to account for the profits received and enjoyed by him up to that date. Beyond that period his right and liability will both cease, and in lieu of either he will retain the right to receive simple interest at eight annas per cent, per mensem. This is the principle on which the Court below has proceeded in preparing the decree absolute for sale, which has followed on the failure of the plaintiffs-mortgagors to avail themselves of the opportunity to redeem the property within the period fixed. The appeal, therefore, fails and is dismissed with costs, including fees on the higher scale. For the purpose of proper calculation of fees the appeal will be valued at Rs. 7,000.

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