

Dildar Vs. Shukrullah and ors.

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Court : Allahabad

Decided On : Dec-04-1923

Reported in : AIR1924All444; 78Ind.Cas.1023

Judge : Stuart and ;Mukerji, JJ.

Appellant : Dildar

Respondent : Shukrullah and ors.

Judgement :

1. The facts which have given rise to this second appeal are these: The appellant and some others, on whose behalf the appellant has appealed, obtained two mortgages of certain shares in a patti of 4 annas. Subsequently, it is not clear whether after the redemption of the mortgages or before the redemption, the mortgagees purchased a small share (6 p:) out of the patti. The mortgages were redeemed. After the mortgage the appellants obtained possession over certain plots of land. Presumably this possession was obtained as mortgagees and on behalf of the mortgagors. The dispute arose when the mortgage was redeemed. The mortgagees refused to give up the lands over which they were in possession as mortgagees. Their contention was that they had become co-sharers in the lands and they were entitled to keep possession as co-sharers.

2. The Courts below gave a decree for joint possession to the plaintiffs and also a decree for mesne profits. The plaintiffs have not appealed. The contentions of the

appellant are 63 Ind. Cas. 806 : 19 A.L.J. 783 : 3 U.P.L.R. (A.) 146 : 44 A.5; (1922) A.I.R. (A.) 162 the there should have been no decree for joint possession, and (2) that thdre should have been no decree for mesne profits.

3. On the first point it seems to us clear that the mortgagees were bound to hand over the lands of which they got possession, in the capacity of mortgagees, and in no other capacity. When the share was redeemed the whole quantity of land should have been handed back to the mortgagors. After that act had been performed it was for the parties to settle between themselves, if possible, what lands out of these should be handed back to the mortgagees as representing a fair share of theirs. The mortgagees were not at all entitled to keep possession simply because they had become co-sharers in the patti. In this view the possession of the mortgagees over the lands which they have got in the capacity of mortgagees was unlawful. The decree for joint possession was, therefore, a very proper one.

4. On the second point the learned Counsel for the appellant has cited to us the case of Sarbjit Singh v. Raj Kumar Roy 63 Ind. Cas. 806 : 19 A.L.J. 783 : 3 U.P.L.R. (A.) 146 : 44 A.5; (1922) A.I.R. (A.) 162 In our opinion that case is quite distinguishable. It was a case in which certain admittedly joint lands were held by tenants and after the tenants left one of the co-sharers took possession of those lands. The defendants in the case were entitled to take possession of those lands as co-sharers in the village. In the present case, as we have already said, the mortgagees were bound to hand over the entire quantity of land they had taken possession of as mortgagees. In our opinion, the Courts below might have given a decree for possession and not only a decree for joint possession. The decree for mesne profits, therefore, was perfectly correct.

5. The appeal fails and is dismissed with costs which will include in this Court fees on the higher scale.