

Hari Kishan and ors. Vs. Shamlal

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Court : Rajasthan

Decided On : Nov-06-1968

Reported in : 1968WLN120

Judge : Jagat Narain, J.

Appeal No. : S.B. Civil Revision No. 290 of 1967

Appellant : Hari Kishan and ors.

Respondent : Shamlal

Disposition : Application allowed

Judgement :

Jagat Narain, J.

1. This is a revision application by the decree-holders against an order of the executing court abating execution proceedings.

2. The judgment-debtor executed a possessory mortgage in favour of one Motimal Bhandari in respect of his house on 1-1-45. On 23-4-49 he executed the present possessory mortgage in favour of the decree-holders partly to pay off the earlier mortgage and partly to defray the expenses of the marriages of his daughters. The mortgage amount was Rs. 6,000/- out of which Rs. 4,000/- were paid to the earlier mortgagee and Rs. 2,000/- were borrowed for celebrating the marriages of

the daughter. The contention on behalf of the decree-holders is that the case falls under Section 4(h) of the Rajasthan Relief of Agricultural Indebtedness Act, 1957 and the provisions of the Act are therefore not applicable. The sub-section runs as follows:

4. The provisions on this Act shall not affect claims due in respect of-

(h) a mortgage-claim against property in the hands of a subsequent transferee who has taken the transfer in order to satisfy the mortgage.

On behalf of the judgment-debtor it is contended that the mortgage in favour of the decree-holders is not a subsequent mortgage because the earlier mortgage was paid off when this mortgage was executed. The recitals in the deed go to show that the present mortgage was executed to pay off earlier mortgage. The present mortgage is thus a subsequent mortgage with n the meaning of Section 4(h).

3. The next contention is that as the whole of the mortgage money was not borrowed for paying off the earlier mortgage Section 4(h) is not applicable. I am unable to agree with this contention. The mortgage cannot be split up into two mortgages one for Rs. 4000/- and the other for Rs. 2000/-.

4. Following the decision in *Kajorilal v. Bhanwer Lal* 1966 R.L.W. 616. I allow the revision application and set aside the order of abatement, I leave the parties to bear their own costs.

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