

Khuda Buksh Vs. Shiv Dutt and ors.

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Court : Rajasthan

Decided On : Jan-07-1974

Reported in : 1974WLN(UC)275

Judge : C.M. Lodha, J.

Appeal No. : S.B. Civil Second Appeal No. 78 of 1967

Appellant : Khuda Buksh

Respondent : Shiv Dutt and ors.

Disposition : Appeal dismissed

Judgement :

C.M. Lodha, J.

1. This is a plaintiffs' second³ appeal arising out of a suit for redemption of a house situated near Sodagaron-ki-Masjid in the city of Jodhpur.

2. The plaintiffs' case as set in the plaint was that their ancestors mortgaged the house in question in samwat Year 1938 in the month of Srawan for a sum of Rs. 110/- 'Bijai sahi' in favour of the defendants' ancestors. It was prayed that a decree for possession of the house by redemption may be granted on payment of Rs. 90/- equal to Rs. 110/- 'Bijai Sahi' coin prevalent in the former State of Jodhpur. The alleged mortgage was denied by the defendants, and they also pleaded bar of

limitation.

3. After recording the evidence produced by the parties the trial court dismissed the suit, and its judgment and decree were upheld by the learned District Judge, Jodhpur. Hence this appeal.

4. It may be stated at the very outset that this appeal does not involve any question of law. The only question for decision is whether the mortgage set up by the plaintiffs in the plaint has been proved. Admittedly there is no written evidence regarding the alleged mortgage. It has not been mentioned in the plaint as to what were the terms of the alleged mortgage, such as rate of interest, period of etc. The learned District Judge has further pointed out that there is variance between the pleading and proof. Khuda Bux P.W. 1 has stated that Jeetmal was not the mortgagee but his ancestors were the mortgagees, whereas in the plaint it is mentioned that Jeetmal was the mortgagee. Further in the objections filed by the plaintiffs in the 'patta proceedings' (Ex. A. 2) the plaintiffs stated that the house in dispute had been mortgaged with the defendants for a sum of Rs. 100/. The only evidence regarding the alleged mortgage produced by the plaintiffs consists of the statement of the plaintiff Khudabux himself. He has also no direct knowledge about the alleged mortgage as he states to have been born after the mortgage pleaded by him. He states that he came to know about the fact of mortgage from a document called 'Pol-ka Khat' read out to him by the defendant Shambhu Dutt. However, he admits that that document did not contain the names of the mortgagees. Thus the whole edifice of the plaintiffs' case falls to the ground. In his statement dated 26-8-1944 (Ex A-1) in the escheat proceedings Khudabux stated that he could not say who were the mortgagees and when was the mortgage effected. Similarly in the objections filed by him in the course of escheat proceedings with respect to the house in question he did not give any details regarding the alleged mortgage. His statement has been discussed in detail by the courts below and I am in perfect agreement with the view taken by them that his evidence is wholly insufficient for proving the alleged mortgage. Neither the names of the mortgagees are known with any definiteness nor the names of the mortgagors, nor any other details pertaining to the mortgage pleaded by the plaintiff are ascertainable from the evidence on the record.

5. The finding of fact arrived by the courts below that the plaintiffs have miserably failed to prove the mortgage set up by them appears to be quite in order and does not call for interference.

6. The result is that I do not see any force in this appeal, and hereby dismiss it with costs.

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