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Court : Kolkata

Decided On : Mar-15-1932

Reported in : AIR1933Cal198

Appellant : AsanuddIn Mandal

Respondent : Asmatulla

Judgement :

Mitter, J.

1. This is an appeal by the plaintiff and arises in a suit to enforce a mortgage bond which was executed in his favour by the defendant in Ashar 1332 B.S. by which the mortgagor hypothecated certain immovable properties and promised to pay interest at the rate of 30 per cent per annum. The defence of the defendant was that the mortgage had been paid off by the plaintiff agreeing to take Rs. 555 out of the money due under the mortgage and remitting Rs. 111 due on the mortgage on a particular date, and in proof of that fact the defendant produced a receipt purporting to have been given by the plaintiff the material terms of which are as follows:

Rupees 666 is due to me upon the mortgage bond of which I have received from you Rs. 555 after remission of the balance. Nothing more remains due upon the bond. I cannot return the bond to you now as it is with my pleader. After getting it back from my pleader I shall enter the endorsement of this payment upon the bond and return it to you.

2. A question was raised before the Court of first instance that this document was inadmissible for want of registration having regard to the provisions of Section 17, Clause 2(ii), Registration Act, as it purported to extinguish the liability in respect of immovable property. The suit was accordingly decreed on contest and the usual preliminary mortgage decree for sale was passed. Against this decision an appeal was taken to the Court of the Subordinate Judge of Bogra and the Subordinate Judge was of opinion that the receipt the material terms of which we have already recited did not require registration as it merely purported to be a receipt in full satisfaction of the mortgage debt. In this view the Subordinate Judge was of opinion that, the admission contained in the receipt should be taken into account along with the deposition of two witnesses examined on behalf of the defendant for the purpose of proving this payment, and the Subordinate Judge was of opinion that the evidence of these witnesses coupled with that afforded by the receipt established beyond doubt the allegation of satisfaction of the mortgage bond made by the defendants. He accordingly dismissed the plaintiff's suit.

3. Against this decision the present appeal has been brought by the plaintiff and the contention which has been raised before us is that the lower appellate Court has committed an error in law in admitting in evidence this document which was rejected by the Court of first instance on the ground that it required registration. Certain authorities have been cited in favour of this contention of the appellant. Reference has been made to the decision of the Allahabad High Court in the recent case of Jwala Prasad v. Mohan Lal : AIR1926 All693 , where the view contended for by the appellant had been taken. Of course the Allahabad High Court in an earlier decision, namely, in the case of Piari Lal v. Makhan (1912) 34 All 528, took a different view. The learned advocate for the appellant has also relied upon a decision of the Madras Court. It seems to us that the result of the authorities is that the receipt for payment of money due under a mortgage does not require registration under Section 17, Clause 2(ii) if it does not purport to extinguish the mortgage. A large number of cases which are quoted by Sir Dinshah Mulla in his Commentary of the Registration Act at p. 97 of the second edition support this view. But the authorities show that it does require registration if

it purports to extinguish the mortgage. Reference may be made in this connexion to the Allahabad case just referred to and to the decision of the Madras High Court in the case of Neelmani Patnaik v. Sukadeva Behara AIR 1920 Mad 742 at p. 806 (of 43 Mad).

4. There can be no doubt on the statement contained in the receipt that the mortgagee exonerated the mortgagor from any liability under the mortgage and this document purported to extinguish the liability under the mortgage. It has however been sought to be argued by the learned advocate for the respondent that if it is not receivable in evidence as extinguishing the liability it can be received in evidence for a collateral purpose, namely, for the purpose of showing the admission of the plaintiff that he would return the mortgage bond after endorsement of payment and that he could not return it because the mortgage bond was with his pleader. It is difficult to split up the document in this way. The question with regard to the return of the mortgage bond to the defendants was only introduced because the plaintiff exonerated the defendant from liability under the mortgage bond. No question of the return of the bond can arise unless the mortgage debt was satisfied. It appears clear that on that date the mortgage bond would have been satisfied by the payment of Rs. 555 for the document shows that there was a much larger sum due, and we do not think we can hold that this document can be used for the purpose of proving this payment. We think the Subordinate Judge has not taken the correct view of the law in this behalf.

5. The result therefore is that the judgment and decree of the lower appellate Court must be set aside and the case sent back to it in order that it may rehear the appeal after excluding from evidence the receipt in question which was admitted by him at the appellate stage. It will be open to the Subordinate Judge to decide the matter on such oral evidence as to payment which the respondent might offer and on such evidence as has already been tendered as also on such further evidence which the lower appellate Court may take in the exercise of its powers under Order 41, Rule 27, Civil P.C. The Subordinate Judge will rehear the appeal in the light of these observations. The costs of this appeal will abide the result.

S.K. Ghose, J.

6. I agree.