

(1945) 10 AHC CK 0024
In the Allahabad High Court

Bal Govind

APPELLANT

Vs

Babu Ram Singh

RESPONDENT

Date of Decision : 12-10-1945

Acts Referred:

Citation : AIR 1946 All 283

Hon'ble Judges : Allsop, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Allsop, J.—This is an appeal against an order of remand. The appellant was a simple mortgagee and he was also a tenant holding certain plots of land from the mortgagor. The suit was one by the mortgagor u/s 33, Agriculturists' Relief Act, for an account of the amount due. The plaintiff alleged that the interest on the mortgage had been set off against the rent due from the appellant mortgagee under an oral agreement to that effect. The trial Court held that the agreement could not be proved. The learned Judge of the lower appellate Court decided that there was no reason why the agreement should not be proved and, therefore, remanded the suit to be decided upon its merits.

2. It is argued in appeal that the agreement should not be proved because of the provisions of Section 92, Evidence Act, and we have been referred to the case in Kali Deen Singh Vs. Jagdat Pathak, . This case has nothing to do with this matter. It was a case for ejectment of a tenant in which the defendant pleaded that he was holding the land as security for the payment of the amount due on a bond so as to enable him to recover interest on that money. It was rightly held that the defendant could not set up what was in effect a plea of the existence of a usufructuary mortgage on the basis of an oral agreement when the written contract between the parties was that the defendant was the plaintiff's tenant. There is nothing of that kind in the case before us. Nobody pretends that the mortgage is other than a simple mortgage or that the defendant is other than the plaintiff's tenant. It is merely said that there was an agreement between the

parties that an amount due from the mortgagee on account of rent to the mortgagor should be set off against an amount due from the mortgagor to the mortgagee on account of interest. There is no reason why such an agreement should not be proved. It might well have happened that in any particular year the mortgagee might have owed the mortgagor a certain amount of money on some other account, as for instance, the price of a bullock and the mortgagor might have owed the mortgagee a certain amount on account of interest. There is no reason why they should not have agreed that one sum should be set off against the other. There is no force in this appeal and we dismiss it with costs.