

(1927) 03 AHC CK 0027
In the Allahabad High Court

Baz Bahadur Singh and Others

APPELLANT

Vs

Raghubir Prasad and Others

RESPONDENT

Date of Decision : 10-03-1927

Acts Referred:

Citation : AIR 1927 All 385 : (1927) ILR (All) 707

Hon'ble Judges : Mukerji, J; Ashworth, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

Mukerji, J.—This is a plaintiffs' appeal arising out of a redemption suit. There was a mortgage executed by one Durga Singh in favour of three persons Gaya Prasad and two others, for a sum of Rs. 5,700 on the 11th of January 1877. The mortgage was a usufructuary one. The plaintiffs who claimed to have received the property on foot of a will executed by Durga Singh, seek to redeem it on payment of a certain sum of money. The defendants are transferees of the original mortgagees. The question is what is the amount that has to be paid in order to effect redemption. On behalf of the appellants, it has been contended that the lower Court should not have allowed the mortgagees a sum of Rs. 122 and the interest thereon, a sum of Rs. 20-12-0, on certain grounds. We have to see whether the appellants are right.

2. It appears that one of the items that make up the sum of Rs. 5,700, the total mortgage money, was a sum of Rs. 1,011 agreed to be paid by the mortgagees and to be received by the mortgagor, at the registration. Accordingly in the mortgage deed the mortgagor said as follows:

"To-day I received a further sum of Rs. 1,011 in cash at the time of registration." The appellants' case was that out of this sum only Rs. 889 was paid before the Sub-Registrar and they contend that the balance of Rs. 122 should have been deducted from the mortgage money along with interest. On the one hand we have the statement of the mortgagor in the deed that he expected to receive a

sum of money at the registration. On the other hand we have got the certificate of the Sub-Registrar that only Rs. 889 was paid before him. In the circumstances the Registrar's certificate should have, in, my opinion, prevailed as against the statement of the mortgagor in the deed, which does not amount to even an admission, which is usually rebuttable.

3. As regards interest, the mortgagees claimed it at 1% per mensem up to the date on which the mortgagor could redeem a prior mortgage and obtain possession of the mortgaged property. Interest at that rate has been allowed by the Court below, and it is agreed by the learned Counsel for the appellants that this interest ought to be allowed. It follows therefore that if we deduct the sum of Rs. 122 we must deduct the interest also which comes to Rs. 20-12-0. I would therefore allow the appeal to the extent of Rs. 142-12-0. The amount payable to the mortgagees on redemption should be reduced by this sum.

4. There is a cross-objection that the Court below should have allowed to the respondents a sum of Rs. 740-3-9 over and above what it has allowed. No evidence was laid before us to substantiate this cross-objection. No evidence has been printed. The cross-objection therefore fails. I would dismiss it also with costs.

Ashworth, J.

5. I concur, but it appears to me desirable in view of the remarks of the District Judge in his judgment, to consider, in somewhat more detail, the question of the conclusiveness in a mortgage or sale deed of an averment of receipt of consideration. In this case the mortgagor stated in the mortgage deed: "To-day I received a further sum of Rs. 1,011 in cash at the time of registration". The Sub-Registrar's endorsement, however, states: "The executant received Rs. 889 in cash at the time of registration". The District Judge has rightly considered that the recital by the mortgagor does not operate under the law of estoppel. It may be mentioned that in English law the general rule appears to be that a person who is a party to a deed is estopped from denying its contents, but that to this general rule there is the exception that a receipt in a deed does not amount to an estoppel generally, either at law or in equity. [See pages 49 and 50 of Cockie's Cases and Statutes on Evidence, 4th edition.] In India the law on the subject is contained in the Evidence Act, of which Act Sections 17 to 21 treat of admissions and Section 115 of estoppel. It has been declared, in decisions of the Privy Council that Section 115 is not exhaustive of the law of estoppel applicable to India. But it may safely be said that a recital of a receipt in a deed will not operate as an estoppel, under any application of the principle embodied in Section 115 (as opposed to the actual terms of that section) because as stated above, such recitals do not operate by way of estoppel in English law. We have, therefore, to view the recital merely in the light of an admission, and from this point of view, the sections in the Evidence Act as to admissions must be deemed to be exhaustive. Now, an admission must be read as it stands and it is not permissible to take one part of an admission (as to a single fact or occurrence)

and reject another part. In this case, the recital in the deed says that the mortgagee received a certain sum at the time of registration. It is not permissible to cut down this admission into a mere statement that he received it. Admissions are of no evidential value once they are proved untrue. This admission is proved untrue by the Sub-Registrar's endorsement that a lesser sum was paid at time of registration. The admission must, therefore, be rejected entirely and the District Judge was not correct in treating it as an admission that the money had been received though at some other time than at the time of registration.