

**(1930) 02 AHC CK 0037**  
**In the Allahabad High Court**

Beni Misir

APPELLANT

Vs

Mahabir Sukla and Others

RESPONDENT

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**Date of Decision :** 21-02-1930

**Acts Referred:**

**Citation :** AIR 1930 All 431

**Hon'ble Judges :** Dalal, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Dalal, J.—The defendant-appellant holds a mortgage of 9th October 1906 under which he is in possession and there is a second document in his favour of 10th September 1907 as to the nature of which there is a dispute. The plaintiff holds two mortgages, one a simple mortgage dated 21st May 1915 and the second a mortgage by way of conditional sale dated 24th February 1927. The document of 10th September 1907 is not registered. The plaintiff had formerly sued on a simple mortgage of 21st May 1915 for redemption, when he obtained information of the document of 10th September 1907 in favour of the defendant. He withdrew that suit because it was premature by reason of the usufructuary mortgage of 1906 in favour of the defendant not having come to an end at the time of the institution of the plaintiff's former suit. In the present suit for redemption the only dispute is whether the plaintiff should be compelled to pay off the document of 10th September 1907 in favour of the defendant or not. The lower appellate Court has given two reasons why he should not be so compelled: (1) that the document of 1907 ought to have been registered and it not having been registered did not create any interest in immovable property and (2) that even if the document of 1907 created such interest the plaintiff was entitled to priority on his deed of 1915 because at the time of the execution of that deed it is not proved that the plaintiff had knowledge of the 1907 bond in favour of the defendant.

2. The lower appellate Court has taken the view that whether the document be a

mortgage or a charge it should be registered. As regards the charge he quotes from Gaur's Treatise on the Transfer of Property Act, where the commentator has given his opinion that a charge need not be created by a document but if it is created by a document that document should be registered. In my opinion the document of 10th September 1907 is a document evidencing a mortgage, so the question as to whether a document evidencing a charge should be registered or not need not be enquired into, As usually happens in this Court the directions of the Court as regards translation are not carried out and my practice of reading the vernacular makes the Bar more and more indifferent in carrying out this specific rule of the Court. From what can be gathered as to the terms of this document from the judgments of the two subordinate Courts my opinion is that it is a mortgage. In this case I have not read the vernacular document and I shall maintain that practice in all future appeals not to have a vernacular document read, when in spite of a specific rule of the Court counsel persist in not having documents translated into English for the information of the Court hearing the appeal. In the case of mortgage the appellant's learned counsel argued that the sum secured being less than Rs. 100 the mortgage may be effected either by a registered instrument signed and attested as laid down in the Act or by delivery of property.

3. In the present case, however, delivery of property was not possible because the defendant was already in possession. This possession is sought to be utilized by the appellant's counsel in a different way and it is urged that when the defendant was already in possession it was tantamount to delivery of the property. Such an argument would be in conflict with the intention of the law. What the law desires is that there should be a public notice of mortgage liens, so that future transferees may be warned. Future transferees would be warned by the possession of a person other than the owner or by discovering a registered document in the registration office. If, however, possession can be traced to a registered document found in the Registrar's office, the subsequent transferee would not be put to the necessity of any further enquiry and would presume that the possession was in pursuance of the registered document. It cannot be the intention of the law that after obtaining possession publicly under a notified publicly document by means of registration, the mortgagee may go on adding secretly to the burden of the mortgage by obtaining further charges each of less than Rs. 100 and justifying want of registration by his possession which originated on the basis of a public document. I am of opinion that when the defendant was already in possession subsequent mortgage in his favour can raise an interest in immovable property only if the document is registered.

4. In that view it is not necessary to enquire into ground 2 put forward by the lower appellate Court against making the plaintiff liable to pay the bond of 1907. If I had to decide that ground, possibly I would not have agreed with the lower appellate Court because after receiving notice of this bond of 1907 the plaintiff advanced money again in 1927 and he must have considered the property worth the further advance after taking into consideration the defendant's bond of

1907. Following the principles laid down in *Annu Mal v. Collector of Bareilly* [1906] 28 All. 315, I would have held the plaintiff liable to redeem the bond of 1907 if that bond in my opinion had created interest in the property in suit.

5. For these reasons the appeal is dismissed with costs.