(1931) 03 AHC CK 0050

In the Allahabad High Court

Boochi APPELLANT

Vs

Bohre Nathi Ram and Others RESPONDENT

Date of Decision : 17-03-1931

Acts Referred:

Citation : (1931) 03 AHC CK 0050

Hon'ble Judges : Pullan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pullan, J.—This appeal arises out of a suit brought u/s 68(b), T.P. Act. The parties entered into a mortgage of agricultural land. In the terms of the mortgage it is clearly stated that the mortgagee shall obtain possession and that the interest of the mortgage debt shall be satisfied by the usufruct. On the same date the parties entered into a further agreement by which the mortgagor should retain possession on payment of a rent of Rs. 216 per annum. The mortgagor then went to the Revenue Court claiming his right, as an expropriator, to have the rant reduced by 25 per cent and he obtained an order fixing the rent at Rs. 170-9-0. The mortgagee brings this suit on the allegation that he has been deprived of part of his security in consequence of the wrongful act or default of the mortgagor. It may be that if the rent is fixed at a sum lower than that contemplated by the parties and that under the terms of the agreement no higher rate can be obtained, there has been in some sense a reduction of the security possessed by the mortgagee. But if Section 68(b), T.P. Act, is to be applied, there must be proof that that reduction in the security was caused by the wrongful act or default of the mortgagor. In the present case we are not prepared to hold that the two transactions, that is to say, the mortgage and the kabuliyat are so closely connected as to be inseparable. There is no reference in the mortgage deed to any contemplated tenancy on the part of the mortgagor. The mortgage deed does not restrict the mortgagee from leasing the land to any person.

2. We cannot therefore find that an intention to let the land out to the mortgagor was an essential part of the contract. Thus, whatever the mortgagor has done in going to the Revenue Court for reduction of his rent, we cannot find that it amounts to a default on his part as mortgagor. We cannot even hold that it is a wrongful act to claim his right to a reduced rent as an exproprietor. This suit was dismissed by the Court of first instance, but decreed on appeal by the Additional Subordinate Judge, who appears to have followed an unreported ruling of this Court in Fateh Din v. Kishen Lal S.A. No. 260 of 1922, decided on March 1928, but that case is distinguishable from the present on two grounds. The first is that we are unable to say whether in that case the mortgagee made a reference to the kabuliyat or not, and secondly, that was a case u/s 68(c), T.P. Act, as it was proved that the mortgagor bad not given possession to the mortgagee of the whole of the property. We consider that the judgment of a Bench of this Court in Mohammad Karamat Ali Khan Vs. Ganeshi Lal and Another, has more bearing on the question raised in this appeal. If the mortgagee sought to go behind Section 68(b), he would be met by the defence that, on the findings of the Courts below, his security has not been diminished within the meaning of Section 66 of the same Act. It appears to us that the lower appellate Court has been guided by the feeling that the mortgagee has suffered, that is to say, he has attempted to decide this case on consideration of equity.

3. In our opinion the plaintiff had to prove that his case came directly within the scope of Section 68(b), T.P. Act; and as he failed to do so, ha is not entitled to the relief which he seeks. We allow this appeal with costs, including fees in this Court on the higher scale, set aside the decree of the lower appellate Court and restore that of the Court of first instance.

