
(1914) 11 AHC CK 0013
In the Allahabad High Court

Champa Lal

APPELLANT

Vs

Rupan Singh, Musammat Bagesra and Others

RESPONDENT

Date of Decision : 19-11-1914

Acts Referred:

Citation : (1915) ILR (All) 81

Hon'ble Judges : Piggott, J;Chamier, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Chamier and Piggott, JJ.—This appeal arises out of a suit for redemption of a mortgage of a house in the city of Benares made to secure payment of sum Rs. 400. While in possession of the property the mortgagee, who is the appellant before us, built a pacca room in place of a kachcha room that had fallen down and over the new room he built a second storey and he put up a pacca stair case to communicate with the upper storey. The new ground floor room cost Rs. 147-6-0, the upper room cost Rs. 113 and the stair case cost Rs. 46-8-6. The mortgagee claims to be entitled to these three sums upon redemption of the mortgage, also to a small sum paid by him for taxes. The first court disallowed the mortgagee's claim to these sums and gave the plaintiff respondent a decree for redemption on payment of Rs. 400 only. On appeal the District Judge allowed the cost of the ground floor room but disallowed the other items. The mortgagee has appealed to this Court regarding the items disallowed and there is a cross-objection regarding the cost of the ground floor room.

3. Taking the cross-objection first, we think that the District Judge was clearly right in allowing the cost of the new room on the ground floor. The original room had fallen down and the mortgagee was entitled to rebuild it, otherwise the house would have become uninhabitable. We think that this item is covered by Section 72(b) of the Transfer of Property Act as an expense properly incurred for the preservation of the property. We cannot agree with the argument of the plaintiff respondent that the mortgagee was bound to rebuild the room with

kachcha materials. He was entitled to rebuild it in a more substantial manner and so as to avoid constant expense over" repairs and we do not think that the sum spent on the work is excessive.

4. The upper storey and stair case were built by the mortgagee for his own convenience and comfort without any necessity and without the mortgagor's desire or consent. They alter the whole character of the house and are certainly not covered by any of the provisions of Section 72 of the Transfer of Property Act. If regarded as accessions to the property acquired at the expense of the mortgagee they were not necessary to preserve the property from destruction or made with the consent of the mortgagor, and as they cannot be separated from the rest of the property without detriment to it, the mortgagor is not bound to pay the cost of them u/s 68 of the Act. The mortgagee contends, that Section 63 is inapplicable and that apart from Section 72 or any other provision of the Act he is entitled to be recouped the cost of the upper storey and stair case on the ground that they are lasting improvements reasonably made for the benefit of the property which added to the selling value thereof. He relies upon the decision of Banerji, J. in *Rahmatullah Beg v. Yusuf Ali* (1912) 10 A.L.J. 124 in which he followed and applied the decision of the Court of Appeal in *Shepard v. Jones* (1882) 21 Ch. D. 469. The latter was not a suit for redemption at all, but a suit for an account from a mortgagee, who had exercised his power of sale, of the application of proceeds of that sale, and what was allowed was a sum of ₹ 100 spent in deepening a well in premises used as a brewery and worth ₹ 5,000. What the court actually held was that if the money was spent on what turned out on inquiry to be a lasting and permanent improvement and it was found that the value of the property had been enhanced to the extent of the money laid out, the mortgagor could not have the benefit of it without paying for the outlay. All the members of the court lay stress on the consideration that not only must the improvements be lasting and permanent but the expenditure incurred must be reasonable. They throw no doubt whatever on the rule applied in many previous cases that a mortgagor must not be improved out of his property. Assuming for the moment that we are entitled to go outside Section 72 of the Transfer of Property Act and apply the decision in *Shepard v. Jones* (1882) 21 Ch. D. 469 to this case, we find nothing in that decision which in any way helps the appellant mortgagee. We think that the mortgagee had no right whatever to add an upper storey to the house for his own benefit and at the expense of the mortgagor, and considering the value of the original house we cannot hold the expense incurred was reasonable. The principal sum secured was Rs. 400, but the mortgagee has claimed to be paid about Rs. 300 for additions, improvements &c., made without any reference to the mortgagor. Nothing in the decision of Banerji, J. or of the Court of Appeal in the case cited above justifies such a claim as this.

5. Further we are of opinion that the claim made by the mortgagee cannot be allowed unless it comes within Section 72 of the Transfer of Property Act. That was the view taken by the Madras High Court in *Arunachella Chetti v. Sithayi Ammal* ILR (1896) Mad. 327; and in *Sammo v. Abdul Wahid* Weekly Notes 1883

p. 208 this Court refused to allow a mortgagee the cost of additions to the mortgaged property made without the consent of the mortgagor. It is not, however, clear that the latter case was governed by the Transfer of Property Act. The case of Shepard v. Jones (1882) 21 Ch. D. 469 had not been decided by the Court of Appeal when the Transfer of Property Act Was passed, but there were many other published decisions on the subject including the case of Sandon v. Hooper (1843) 6 Beav. 246 : 14 L.J. Ch. 120 which is referred to by Banerji, J., in the course of his judgement. Nothing is said in the Act about compensation for improvements and we think that the Legislature advisedly refrained from including in the Act any provision which would enable a mortgagee, without consent of the mortgagor, to add to and improve, or alter the property. Such a power in the hands of the ordinary mortgagee in this country would obviously lead to much litigation, and the Legislature was, we think, well advised in restricting the powers of the mortgagee within narrow limits.

6. The court below refused to allow interest on the sum of Rs. 147-6-0, and omitted to deal with the claim on account of taxes paid by the mortgagee. We allow interest at the rate of one per cent, per mensem from the 20th of April, 1911, up to the date of redemption on the sum of Rs. 147-6-0, and by consent of the plaintiff respondent we allowed the sum of Rs. 8-8-0 on account of taxes paid by the mortgagee. To this extent and as regards costs the appeal is allowed. The cross-objection is dismissed. The plaintiff respondent and defendant appellant will pay and receive proportionate costs throughout, other parties will pay their own costs.