

(1923) 05 AHC CK 0024
In the Allahabad High Court

Chhammu Lal and Others

APPELLANT

Vs

Bhajan Lal and Others

RESPONDENT

Date of Decision : 28-05-1923

Acts Referred:

Transfer of Property Act, 1882 — Section 72

Citation : AIR 1924 All 47 : 73 Ind. Cas. 985

Hon'ble Judges : Ryves, J; Daniels, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for redemption of a usufructuary mortgage of some shops executed in 1843 by the predecessors in title of the plaintiffs. The plaintiffs claim that the principal and interest had been more than paid up by the usufruct. Various defences were raised in the suit, but it is now only necessary to consider two points. The Trial Court held that the plaintiffs must pay Rs. 1,099-0-9 plus interest at 9 per cent, per annum to the defendants for necessary repairs made by them in the premises they held under the terms of the mortgage-deed. It further held that Chhammu Lal and Ram Narain who had obtained possession of two of the shops had made certain improvements in their shops which had cost them about Rs. 109 each, and directed the plaintiffs to pay this amount to Chhammu Lal, and Ram Narain with interest at 9 per cent, per annum. On appeal the lower Appellate Court held that the defendants were not entitled to interest on the sum of Rs. 1,099 spent by them in repairs, on the ground that they had already received increased rent in consequence of these repairs which was equivalent to interest. It seems to us that this really is a finding of fact.

2. On the second point it held that there was no evidence to show that Ram Narain had made any improvements at all, and, therefore, nothing was due to him; and as regards Chhammu Lal it found, that what he had done was to put in some iron bars into a window in order to suit a particular tenant, and that he had received increased rent accordingly. In any case, it seems to us that

improvements of this kind do not fall within Section 72 of the Transfer of Property Act; and in this respect we agree with the concluding remarks in the case reported in *Rupan Singh v. Champa Lal* 26 Ind. Cas. 521 : 37 A. 81 : 13 A.L.J. 14. The result is that the appeal fails and is dismissed with costs including fees in this Court on the higher scale.