
(1895) 02 AHC CK 0007
In the Allahabad High Court

Durga Singh

APPELLANT

Vs

Naurang Singh

RESPONDENT

Date of Decision : 19-02-1895

Acts Referred:

Citation : (1895) ILR (All) 282

Hon'ble Judges : Aikman, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Aikman, J.—This was a suit by a puisne mortgagee to redeem the mortgage of a prior mortgagee who was under his mortgage in possession of the mortgaged property, namely, certain agricultural land. The plaintiff paid into Court the amount secured by the prior mortgage. In addition to the sum deposited in Court the prior mortgagee claimed to be entitled to certain other payments, amongst others, to Rs. 600 for the construction of a well. The lower Court (the Subordinate Judge of Jaunpur) has held that the plaintiff, before he can redeem, must pay to the respondent the sum of Rs. 100 on account of the outlay on this well. In second appeal the plaintiff contends that, inasmuch as there was no covenant in the original mortgage-deed to pay more than the mortgaged amount, the defendant was not entitled to any compensation for the repairs of the well. In my opinion this plea is without force. It is impossible to provide in a mortgage-deed for all the accidents that may happen to the property mortgaged.

2. In the present case it has been held proved that a well which was required for the irrigation of the mortgaged land had been ruined through an inundation of the river Gumti, and that the respondent constructed a new one in its place. The mortgagors, who were parties to the suit, filed a written statement admitting that this had been done with their permission. In my opinion whether this new well be looked upon as an accession to the property, and so falling within the provisions of Section 63 of the Transfer of Property Act, or whether the outlay on it be regarded as money necessarily spent in the management or preservation of

the mortgaged property, the prior mortgagee is in either case entitled to add to the principal amount of his mortgage such reasonable sum as he may be shown to have expended. This disposes of the first ground of appeal. In the second ground it is urged that, the evidence in regard to the amount of the expenditure being unsatisfactory, nothing at all should have been allowed. This plea I cannot sustain. It is true that accurate accounts have not been filed by the defendant showing the exact amount of his outlay, but the sum which has been decreed to him by the Lower Appellate Court cannot be deemed to be in any way exorbitant or in excess of his actual outlay. For the above reasons I dismiss this appeal with costs. I extend the time allowed by the lower Court's decree for the payment of the amount found due up to the 1st of June 1895.