

(1887) 08 AHC CK 0002
In the Allahabad High Court

Ganesh Singh

APPELLANT

Vs

Sujhari Kuar

RESPONDENT

Date of Decision : 05-08-1887

Acts Referred:

Citation : (1888) ILR (All) 47

Hon'ble Judges : Tyrrell, J;Brodhurst, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Brodhurst and Tyrrell, JJ.—The respondent in this case gave the appellant a mortgage upon a cultivatory holding. It turned out that that cultivatory holding was of the non-transferable kind referred to in Section 9 of the N. W. P. Rent Act. The respondent was in consequence unable to give possession to the appellant, and he has therefore brought this suit to recover his money. He has been defeated upon the ground that Section 68, Clause, of Act IV of 1882, made it obligatory upon him to require the respondent to give him another sufficient security for his debt, a step which admittedly he has not taken. The Courts below accordingly dismissed the appellant's claim.

2. In second appeal it is argued that Clause (b) of the above section contains the law applicable to the circumstances of this case, because the mortgagee has been deprived of the whole of his security in consequence of the default of the mortgagor. This contention must prevail. It is unquestionable that the mortgagor is in default, and the only plea urged here against the appellant is that he knew the law and was aware that the security he was taking was not transferable to him. Even if this consideration was sufficient to defeat his present claim, it is to be observed that it is not proved, or even asserted, that the appellant had this knowledge. While it is certain that the respondent must have known that she was mortgaging an estate which was by law not transferable, the appellant may well have believed that her tenure was of a transferable character. The appeal is decreed, and the appellant's claim is decreed with costs in all the Courts.