

(1898) 03 CAL CK 0018
In the Calcutta High Court

Girendro Coomar Dutt

APPELLANT

Vs

Kumud Kumari Dasi and Others

RESPONDENT

Date of Decision : 11-03-1898

Acts Referred:

Citation : (1898) ILR (Cal) 611

Hon'ble Judges : Sale, J

Bench : Single Bench

Judgement

Sale, J.—The main question which arises for determination in this case is whether the plaintiff is entitled to a further charge for Rs. 8,000 by way of equitable mortgage in respect of certain property which admittedly was mortgaged to him. The facts are of a very simple character, and are in my opinion very clear, though as regards one point a question arises as to what is the proper inference to be drawn from thorn. The defendant Johurry Lall Pal carried on a piece goods business in Calcutta, and for the purposes of his business from time to time borrowed certain sums of money from Rajender Dutt, the father of the plaintiff. The transactions between Rajender Dutt and Johurry Lall Pal commenced by a loan from Rajender Dutt to Johurry Lall Pal of a sum of Rs. 10,000 as security, for which Johurry Lall Pal deposited title-deeds of the property in suit with Rajender Dutt, intending thereby to create an equitable charge as security for the loan in favour of Rajender Dutt. Subsequently Johurry Lall Pal, purporting to act for himself and for his wife Sreemutty Kumud Kumari Dasi, negotiated with Rajender Dutt for a mortgage of Rs. 60,000 which included the original sum of Rs. 10,000 obtained from him, and on the 18th January 1890 a mortgage for Rs. 60,000 was executed in favour of Rajender Dutt by Sreemutty Kumud Kumari Dasi. It appears that the title-deeds which were deposited with Rajender Dutt previous to the execution of the mortgage stood in the name of Sreemutty Kumud Kumari Dasi, and that Johurry Lall Pal, after the title-deeds had been so deposited, purported to act under the terms of a muhtearnamah which he stated was executed in his favour by Sreemutty Kumud Kumary Dasi. Subsequently to the execution of the mortgage of the 18th of

Janury 1890, Johurry Lall was in want of further sums of money and he borrowed sums amounting to Rs. 21,000 on three different occasions, and on each occasion executed a promissory note in favour of Rajender Dutt. It was agreed between Rajender Dutt and Johurry Lall Pal that the title-deeds already in the possession of Rajender Dutt should be regarded as a deposit to secure these further advances. At the same time Johurry Lall Pal, professing to act both for himself and for his wife, agreed that a regular legal mortgage should be executed by himself and his wife to secure these further advances. On the 25th August 1890 that mortgage, which is the mortgage in suit, was executed. In the year 1893 Johurry Lall Pal required a further advance for the purpose of his business, and acting, as the evidence shews, in precisely the same way as when the former advances were obtained by him, he requested the plaintiff to lend him Rs. 16,000, agreeing that the title-deeds then in the possession of the plaintiff should be held by him as security for this further advance. The plaintiff, however, agreed to lend only a sum of Rs. 8,000. The question is whether under the circumstances there is evidence of authority on the part of Johurry Lall Pal to bind his wife, and, if so, whether the plaintiff is entitled to rank as an equitable mortgagee in respect of this further advance of Rs. 8,000. So far as the evidence of authority goes, it appears to me that there is abundant evidence to shew that Kumud Kumari was holding out to Rajender Dutt and to the plaintiff her husband as authorised on her behalf to borrow monies for her, and for that purpose to deal with the title-deeds so as to secure the monies borrowed. It is I think quite clear, both from the recitals which appear in the mortgage of the 25th August 1890, and also from the allegations contained in the written statement, both of Johurry Lall Pal and Kumud Kumari Dasi, that Kumud Kumari Dasi knew that her husband was acting as her agent for the purposes of his business, and that she authorized him so to do. That being so, the evidence is, it seems to me, sufficient to raise the implication of authority on the part of the husband to bind the wife in respect of the further sum of Rs. 8,000 which was borrowed by the husband under the circumstances I have already stated. The defendant Kumud Kumari Dasi in her written statement denies knowledge or authority in respect of this loan of Rs. 8,000. Neither she nor her husband has been called for the purpose of supporting the defence which she sets up.

2. The next question is, whether upon the facts the plaintiff is entitled to be regarded as an equitable mortgagee in respect of this further sum of Rs. 8,000. It is said there was no further or fresh deposit of title-deeds to secure the advance, and further that the title-deeds were held, not under an agreement to deposit, but under an agreement and a conveyance. Authority has been referred to, from which it would appear that the Court of Chancery refused to extend the doctrine of the deposit of title-deeds creating an equitable mortgage to a case where the title-deeds were already held by the creditor under a mortgage in the nature of a conveyance. The authority referred to is an old case, and it would appear from the more recent case of *In re Beetham* (1887) 18 Q. B. D. 380 that the Courts in England would recognize an agreement that the title-deeds already

held under a mortgage should be held as a security for a further advance, if such agreement satisfied the conditions of the Statute of Frauds.

3. Moreover, it is to be remembered that in the present case the title-deeds in suit were originally held under an agreement to deposit, and that the defendants Johurry Lall Pal and Sreemutty Kumud Kumari Dasi from time to time regarded these title-deeds as deposited so as to secure fresh advances. I, therefore, see no reason why the contention of the plaintiff in respect of the fresh advance of Rs. 8,000 should not be given effect to. It has been pointed out that title-deeds already deposited as security for a previous loan are not required to be redelivered or redeposited to secure a subsequent advance when the parties by a subsequent arrangement intended that they should be held as security for a subsequent advance. In the case of *Ex parte Kensington* (1813) 2 V. & B. 83 Lord Chancellor Eldon says at page 83: "In the cases alluded to I went to the length of stating that, where the deposit originally was for a particular purpose, that purpose may be enlarged by a subsequent parol agreement; and this distinction appeared to me to be too thin, that you should not have the benefit of such an agreement, unless you added to the terms of that agreement the fact that the deeds were put back into the hands of the owner and a redelivery of them required, on which fact there is no doubt that the deposit would amount to an equitable lien within the principle of these cases. "That case is referred to as an existing authority in the 10th edition of Snell's Principles of Equity at page 404, where the learned author says: "In *Russell v. Russell* 1 Wh. & Tud. L. C. 7th edit. 76 it was decided that the deeds were a security for the sum advanced at the time of the deposit, and only for that sum. But it is now held that such deposit will cover future advances, if such was the agreement when the first advance was made, or if it can be proved that a subsequent advance was made on an agreement, express or implied, that the deeds were to be or to remain a security for it as well."

4. I think, therefore, that the plaintiff is entitled to the usual mortgage decree, both in respect of the mortgage of the 25th August 1890 and of the further advance of Rs. 8,000. No relief is claimed as against the defendant Johurry Lall Pal who has been adjudicated an insolvent. A question was raised as to who should pay the costs of the brothers of the plaintiff who were not made plaintiffs in this suit, but were afterwards added as defendants on the ground that they as well as the plaintiff are entitled to the benefit of the mortgage of 25th August 1890. The defendant Kumud Kumari Dasi raised the question as to the title of the plaintiff to institute the present suit by himself, and asked that his brothers should be added as defendants. I think that the proper order to make with reference to the costs of these defendants, who only appeared on the first day of the hearing, is that their costs should be provided for in the same way as the plaintiff's costs from the proceeds of the mortgaged property. It is not necessary to make any order with reference to the costs of Johurry Lall Pal, inasmuch as no relief is sought against him, and he need not have appeared. The decree as against Kumud Kumari Dasi will be in the form of an ordinary mortgage decree.