

(1945) 07 CAL CK 0006

In the Calcutta High Court

Case No : Appeal from Appellate Order No. 134 of 1944

Harey Krishna Maharatna

APPELLANT

Vs

Kali Kumar Sarma

RESPONDENT

Date of Decision : 05-07-1945

Acts Referred:

Citation : (1945) 07 CAL CK 0006

Final Decision : Dismissed

Judgement

Henderson, J.—This appeal arises in connection with an order of the Munsif allowing an application under sec. 34 (6) of the Sylhet Tenancy Act. The first question for consideration is whether the appeal is competent. The District judge dismissed the appeal in his Court on the ground that no appeal lay against the order. The learned Judge seems to have been clearly right in this view. There is no appeal provided for in the Act itself. There is, therefore, either no appeal or a right of appeal must be conferred by the Code of Civil Procedure. Under sub-sec. (7), the order shall have the effect of a decree of a Civil Court. Of course, if every decree of a Civil Court is appealable, this would be decisive; but some decrees are and others are not. It is, therefore, impossible to say that there is any right of appeal in this case.

2. I shall, therefore deal with the matter on the alternative application. The order of the Munsif is opposed on two grounds; (1) that the mortgage was an anomalous mortgage and the section has no application and (2) that the Opposite Party has applied too soon.

3. On the first point, an attempt was made to show that there is a personal covenant to pay. This would be a far-fetched interpretation of the language used. What is abundantly clear, is that possession was delivered in lieu of interest only. There is no suggestion that the Opposite Party will be personally liable to pay the money. The only right of the Petitioner is to remain in possession as long as the money is not paid.

4. On the second point, the learned Munsif has given a most peculiar decision. The Opposite Party will be entitled to recover on the expiry of the period mentioned in the mortgage or of twelve years. The learned Munsif has accepted five years as the period mentioned in the mortgage. The only provision in the clause upon which he relies is to the effect that the principal will never be extinguished and that the Opposite Party will not be allowed to redeem until five years have expired. The Opposite Party is, therefore, not entitled to make this application until twelve years have expired.

5. The appeal is dismissed as incompetent. On the alternative application the order of the Munsif is set aside and the application of the Opposite Party for delivery of possession is rejected. I make no order as to costs.