

(1880) 03 AHC CK 0012
In the Allahabad High Court

Kallu and Others

APPELLANT

Vs

Gobind Singh

RESPONDENT

Date of Decision : 22-03-1880

Acts Referred:

Citation : (1880) ILR (All) 778

Hon'ble Judges : Straight, J;Pearson, J

Bench : Division Bench

Judgement

Straight, J.—This is a first appeal from a decision of the Subordinate Judge of Aligarh of the 30th June 1879. The plaintiffs-respondents sued for possession of mauza Chiti, pargana Chandos, by redemption of a mortgage for Rs. 2,000 executed, as for back as 1835, by Jai Kishan and others, of whom they are the representatives, to Hardeo Singh, whose rights have come to the defendants by purchase. The plaintiffs alleged that the principal sum and interest secured by the instrument had been discharged out of the profits, and they prayed that the property might be restored to them. The Subordinate Judge dismissed the claim of all the plaintiffs, with the exception of three, Kallu, Gobardhan, and Parsa, in whose favour he gave a decree in part. Gobind Singh alone of all the defendants now appeals to this Court.

2. Upon the case being called on for hearing before us, it was urged as a preliminary objection by Pandit Ajudhia Nath on behalf of the respondents, that the appeal had been wrongly preferred to the High Court, as the subject-matter in dispute being the mortgage, and the value of the mortgagee's rights under it, which were below Rs. 5,000, it properly lay to the District Judge. The following decisions of this Court were referred to in support of this contention,—Second Appeal No. 521 of 1869; Second Appeal No. 511 of 1878; and Second Appeal from order No. 51 of 1879 (unreported).

3. On the other side the appellant urged that, as by the statement of defence filed, a question of proprietary title to property of the value of Rs. 15,000 was raised, the appeal was cognizable by this Court. In support of this view our

attention was called to a decision of Turner, J., and Spankie, J., in Second appeal No. 1039 of 1877 (unreported decided the 18th January 1878), which, if accurate, is undoubtedly applicable to the present case.

4. The question thus raised is one of some importance, and, having regard to the precedents already enumerated, we thought it right to take time to consider judgment. The point turns upon the construction of the words "subject-matter in dispute" of Section 22, Act VI of 1871.

5. In the present case the plaintiffs' suit was essentially one for redemption of mortgage, the court-fee payable on which would have to be calculated according to the "principal money expressed to be secured by the instrument of mortgage,"--Article ix, Section 7 of Court Fees" Act. It is true that the defendants by their pleas opened up a wider field for inquiry, involving the consideration of their proprietary title to the property. But we do not think that the character or nature of the subject-matter of the plaintiffs' claim was thereby altered; it continues in its original shape so far as he is concerned, nor is the complexion of it entirely changed because the defendants put forward certain grounds of defence which, if well-founded, must defeat his right to redeem. We therefore think that the subject-matter in dispute was the mortgage and the mortgagee's right under it, and that, the value of this being only Rs. 2,000, the appeal should have been preferred to the Judge. We regret that the decision should be directly at variance with the judgment of Turner, and Spankie, JJ., already mentioned, but the point appears to us so clear, that we feel constrained to differ from the view enunciated by those two learned Judges.

6. The memorandum of appeal will be returned to the appellant for presentation in the proper Court and the appellant will pay the respondents' costs in this Court.