

**(1919) 01 AHC CK 0004**  
**In the Allahabad High Court**

Kamla Devi

APPELLANT

Vs

Gur Dayal and Others

RESPONDENT

---

**Date of Decision :** 09-01-1919

**Acts Referred:**

**Citation :** AIR 1919 All 227 : 51 Ind. Cas. 283

**Hon'ble Judges :** Henry Richarde, C.J;P.C. Banerji, J

**Bench :** Division Bench

---

## Judgement

1.This appeal arises out of a suit to redeem a mortgage. In the plaint it was alleged that the mortgage was executed in or about the year 1856. Various pleas were taken and the Court of first instance dismissed the suit, The lower Appellate Court upheld the decision of the Court of first instance upon the ground that the plaintiff was the wife of a Kanungo and that the transfer of the mortgagor's interest was really for the benefit of the Kanungo, and that it was against public policy that the Kanungo should become the transferee of the mortgagor's interest. This Court on appeal held that this was not a correct view of the law and remanded the case to the lower Appellate Court, the Court of first instance having decided the other issues. On remand the lower Appellate Court, whilst dismissing the suit for redemption, granted the plaintiff a decree for the amount which had been paid for the transfer of the mortgagor's interest against the vendors. The Court decided against the plaintiff so far as the claim for redemption, went upon the ground of limitation. The Court held that the plaintiff had failed to prove that the mortgage was executed within sixty years of the institution of the suit and declined to consider certain acknowledgments on which the plaintiff relied, upon the ground that if the plaintiff sought to bring herself outside limitation it was necessary for her to plead in the plaint that the acknowledgments had been given within limitation.

2. We think that the view take a by the Court below was incorrect. The plaintiff had pleaded the mortgage within limitation. It was, therefore, not necessary for the plaintiff to plead that the acknowledgments saved the operation of limitation.

We think the Court below was bound to consider the acknowledgments which were referred to and proved to the satisfaction of the first Court. These acknowledgments are of a remarkably clear description. They consist of entries in the wajib-uh-arz commencing from the year 1866 and going on to the year 1900. Even in the year 1913 the defendant described himself as mortgagee. In the wajib-uh-arz the description of the land is given, the amount of the mortgage, the names of the mortgagors and the mortgagees respectively. It is said that the plaintiff was bound to have shown that these acknowledgments were given within sixty years of the date of the mortgage; and that as the plaintiff had failed to prove the exact date of the mortgage, the acknowledgments are of no avail. It must be remembered that unless the mortgage was as old as the year 1806, the acknowledgments were perfectly good. It must also be remembered that the party in whose possession the mortgage deed would naturally be, would be the defendant who was the mortgagees" representative. The evidence, therefore, as to the exact date of the mortgage was a matter within the peculiar knowledge of the defendant and not of the plaintiff. We think that the acknowledgments, assuming them to have been given in time, were sufficient acknowledgments of the subsistence of the mortgage, and we think under the circumstances of this case that we ought to hold that acknowledgments were given before the expiration of sixty years from the date of the mortgage. We, therefore, think that the plaintiff ought to have got a decree for redemption. There is some doubt as to whether the land now claimed is identical with the land mortgaged. Before finally deciding the appeal we think that we must refer an issue on this point. We accordingly refer the following issue to the lower Appellate Court, namely.

3. Is the land claimed the land mortgaged, and if not, what is the land mortgaged ?

4. The parties will be entitled to adduce evidence relevant to this issue, On return of the finding the usual ten days will be allowed for filing objections. The case will be put up on return of the finding. The issue may be sent down as soon as possible.