
(1912) 06 AHC CK 0032
In the Allahabad High Court

Kanhai

APPELLANT

Vs

Tilak and Another

RESPONDENT

Date of Decision : 21-06-1912

Acts Referred:

Contract Act, 1872 — Section 24

Citation : 16 Ind. Cas. 42

Hon'ble Judges : Chamier, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Chamier, J.—This was a suit by the appellant for possession of lands mortgaged to him by the first respondent in August 190?; in the alternative, he prayed for a decree for the mortgage-money against the mortgagor personally. It is now conceded on behalf of the appellant that he is not entitled to a decree for possession of the property in-as-much as part of that property is an occupancy-holding. The only question is whether he is entitled to a money-decree against the mortgagor. It appears to me that the case is covered by the decisions in Murlidhar v. Pem Raj 22 A. 205 and Dipan Rai v. Ram Khelawan Rai 7 A.L.J. 330 : 5 Ind. Cas. 557 To accede to the appellant's request would be equivalent to enforcing an agreement part of the consideration of which was unlawful. u/s 24 of the Contract Act, the whole contract must be considered to be void. As the appellant was not entitled to claim a decree for money except on failure on the part of the first respondent to perform an unlawful agreement, the appellant has no--right to claim a decree for money against the first respondent. The appeal is dismissed with costs including fees on the higher scale.