

(1921) 01 AHC CK 0004
In the Allahabad High Court

Lala Hardeo Prasad and Others

APPELLANT

Vs

Ganga Sahai and Others

RESPONDENT

Date of Decision : 04-01-1921

Acts Referred:

Transfer of Property Act, 1882 — Section 83

Citation : AIR 1921 All 197 : 61 Ind. Cas. 48

Hon'ble Judges : Tudball, J; Rafique, J

Bench : Division Bench

Judgement

1. This second appeal arises out of a suit for redemption of a usufructuary mortgage and is preferred by certain of the mortgagees. The other mortgagees have not appealed but they have been made parties by the appellants to the present appeal and are represented. The sole question before us in this appeal is, whether the Courts below have adopted the right principle in making up the account between the parties. "What has happened in this: The mortgagees have not produced; full and proper account in Court. The Zamindar property was mortgaged to them and they have produced accounts showing simply in one lump sum the alleged income from the Zamindari for each year or part, of the year. They have not attempted to produce a detailed account which they ought to have kept showing all the outgoings and all the outgoings. The Court below have, therefore, in the absence of proper accounts calculated the amount due to the mortgagees on the hypothesis, that all the tenants have paid their rents. The point is important for the parties because a rate of interest was fixed for the amount advanced and it was agreed that if the income of the property was insufficient in any year to satisfy the claim for interest, the unpaid balance of interest was to carry a higher rate of interest and compound interest was to run upon it. It was also agreed that if, in any year, the income was greater than the amount due as interest, the mortgagors were to receive credit for the excess. In view of the fact that the appellants did not produce proper account (either intentionally or negligently) we think that the course taken by the Courts below was fully justified and the only proper course to take in the circumstances of the

case. On the face of the accounts calculated in this way, as a matter of fact, a sum of only Rs. 1,785 12 6 was really due to the appellants, but by reason of a mistake in the accounts a sum of Rs. 2,410-2-1 was decreed to them and the plaintiffs did not appeal against that amount but accepted it. The fact that the plaintiffs had deposited Rs. 4,000 u/s 83 of the Transfer of Property Act did not entitle the present appellants to recover that sum. That was a matter between the original mortgagors who sold their property to the plaintiffs and who left with the plaintiffs the sum of Rs. 4,000 to be deposited. In our opinion, there is no force in this appeal and it must be dismissed and it accordingly is dismissed with costs including fees on the higher scale.

2. The two sets of respondents will recover separate costs.

3. Objections have been filed on behalf of the plaintiffs in respect to the error which was discovered in the accounts in the Court of Appeal. The plaintiffs accepted the decision of the Court of first instance as to the amount due and filed no appeal. They are, therefore, not entitled to go behind that decree. As for the value of the trees which were supposed to have been cut, the finding of the Court below is a finding of fact and cannot be disturbed in second appeal. The cross-objections are, therefore, disallowed with costs.