

(1896) 05 AHC CK 0005
In the Allahabad High Court

Lalji Mal

APPELLANT

Vs

Sheo Charan Singh

RESPONDENT

Date of Decision : 12-05-1896

Acts Referred:

Citation : (1896) ILR (All) 371

Hon'ble Judges : John Edge, J;Blennerhassett, J

Bench : Division Bench

Judgement

John Edge, Kt., C.J. and Blennerhassett, J.—This is an appeal from an order in execution of a decree. The defendant had granted to the plaintiff a mortgage. It was usufructuary. It also contained a covenant for the payment of the money due on the expiration of the term, and a proviso that the mortgagee might bring the mortgaged property to sale if the mortgagor failed to deliver possession. Possession was not delivered. The mortgagee obtained a decree for sale. The sale of the property did not satisfy the amount decreed, and he sought for and obtained a decree u/s 90 of the Transfer of Property Act. From that decree this appeal has been brought. It is contended that the mortgagee's remedy u/s 90 was barred by limitation, the contention being that the six years' limitation began to run from the breach of the agreement to put him in possession. The suit was brought after the expiration of six years from that breach and within six years of the determination of the term of the mortgage on which the mortgagor's covenant to pay depended. We need say nothing as to whether the decree for sale might not have been opposed on the ground that the suit was not brought within six years of the breach of the covenant to put the plaintiff in possession. The remedy u/s 90 was a distinct remedy from any suit u/s 68 of the Transfer of Property Act, and, as the suit in which the remedy was sought and obtained was brought within six years of the breach of the covenant to pay, the amount sought to be recovered by the decree u/s 90 was legally recoverable. We dismiss the appeal with costs.