

(1918) 11 AHC CK 0006
In the Allahabad High Court

Maharaj Singh and Another

APPELLANT

Vs

Lalta Prasad and Others

RESPONDENT

Date of Decision : 01-11-1918

Acts Referred:

Citation : AIR 1919 All 74 : 57 Ind. Cas. 774

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

Bench : Division Bench

Judgement

1. This is the plaintiffs' appeal in the suit out of which the connected appeals No. 364 of 1915, No. 16 of 1916 and No. 105 of 1916 decided by us yesterday arose, and for the history of the case we refer to the judgments in the connected appeals. The first point raised by the appellants is that there has been a reduction in the Government revenue from 294 Fasli to 1311 Fasli, and that the plaintiffs ought to have been allowed credit for the difference between the revenue at the date of the mortgages and the reduced rate in pursuance of the terms of the mortgage deed of 1867. The answer to this contention is that during this period Suleman Gardner was alive. It was Suleman Gardner who was entitled to the malikana allowance of Rs. 2,070 per annum and Suleman Gardner had been making fresh mortgages and obtaining fresh advances. We think that it is quite clear that the plaintiff is not entitled to any credit by reason of reduction (if such there was) in the Government revenue during the lifetime of Suleman Gardner.

2. The next contention raised by the appellants is that on the true construction of the mortgage-deed the mortgagee was bound to account for any enhancement of rent which took place after the making of the mortgage and that the mortgagors would be entitled to credit for any enhancement of rents which were received after the making of the mortgage. We think that this contention is without force. It was clearly the intention of the parties that the mortgagees should take the profits of the property in lieu of interest after paying the malikana allowance and Government revenue. We think it would be impossible for the mortgagors to

contend that if for some reason the rents fell below what they were in 1867, the mortgagees would be entitled to increase the indebtedness on the property by reason of such abatement and if they could not, it would be most unfair that the mortgagees should suffer from an abatement and not profit by an enhancement, It may be said that enhancement of Government revenue was almost certain to be followed by an enhancement of the tenants' rents and that it is inequitable that the mortgagees should profit by the enhancement of the rent and at the same time profit by being liable to pay a reduced malikana allowance. The answer to this contention is that the mortgage was for the short period of six years. No great enhancement either of revenue or tenants' rents was likely to take place in that short period, and at any time after the expiration of six years the mortgagors were entitled to redeem. The real reason why in the present case the property was not long ago redeemed was that Suleman Gardner either for himself or for himself and family was getting large fresh advances from time to time from the mortgagees, We hold on the construction of the mortgage-deed that the mortgagees were entitled to the benefit of any enhancement of the tenants' rents and that they are not liable to account for such enhancement.

3. Exception was taken to the finding of the Court below as to the loss which the defendants suffered by reason of the plaintiffs having attempted to take possession of the property and collect the rents. We think that the plaintiffs were altogether wrong in taking the law into their own hands and attempting to take possession of the property without first getting, a legal title to do so. We see no reason to differ from the finding of the Court below on this point or as to the amount of the damages sustained by the mortgagees.

4. It is next contended that the Court below has taken the account on a wrong basis because if there were any sums due to the mortgagors in any year, this ought to have reduced the mortgage debt to that extent year by year. Incidentally this raises a point of some importance in the case and as all the accounts will have to be recast, we think it is our duty to give such directions to the Court as will enable it, when the case goes back, to take the accounts in a fair and equitable basis. We have already mentioned in the connected appeals that the mortgage-deed of 1837 contained a provision that if the Government revenue (which as we have held in the connected appeals included cases) was enhanced, the mortgagees were to be entitled to deduct from the malikana allowance of Rs. 2,070 the difference between the new Government revenue and the sum of Rs. 1,660 (the Government revenue and cesses at the date of the mortgage). It is alleged that the Government revenue and cesses were enhanced to such an extent that the enhancement exceeded the malikana allowance of Rs. 2,070. The mortgagees contended that under the terms of the mortgage-deed not only were they entitled to cease altogether to pay the malikana allowance, but they were entitled to add the sum which they could not deduct year by year to the principal sum due on foot of the mortgage together with interest. To some extent at least it appears that the Court below has given effect to this contention. In the mortgage deed it is stated "if at the time of revision of

Settlement the Government revenue is reduced or enhanced, I will bear the consequences, that is to say, if it is reduced the mortgagees should pay the excess to me and if it is enhanced they should deduct the amount of enhancement from the malikana allowance." It will appear from the words of the deed that a meaning is given to the expression "bear the consequences" and that so far as enhancement of revenue was concerned, the mortgagor "bearing the consequences" meant that the malikana allowance was to be reduced by the amount of any increase in Government revenue. There is no provision in the deed that in addition to deducting from the malikana allowance the mortgagees should be entitled to add the part of the enhancement which they could not deduct from the malikana allowance to the amount of their mortgage. If any such provision had been inserted in the mortgage-deed, it would have been a very harsh provision because, as already pointed out, an enhancement of Government revenue is as a general rule accompanied or followed by an enhancement of rents the justification for an enhancement of Government revenue is in most cases the capacity of the property to yield further profits. We think on the true construction of the mortgage-deed all that the mortgagees were entitled to do when the enhancement of Government revenue took place was to deduct the difference between Rs. 1,660 and the enhancement from the malikana allowance, and we think that if in the course of time the enhancement became so great as to wipe out altogether the malikana allowance, the mortgagees were not entitled to add any sum to their mortgage on this account. We accordingly allow this appeal to this extent, that we direct the Court below in taking the accounts, when the case goes back in pursuance of our order in the connected appeals, to pay due regard to what we have stated in this judgment as also in our judgment in the connected appeals. These are objections filed on behalf of the respondents. These have been dealt with in our judgment in First Appeal No. 105 of 1915 and when the case goes back, the Court will deal with the whole matter in accordance with our judgments. We direct the parties to pay their own costs of this appeal.

5. Without making it in any way a part of our decision we would suggest to the parties what we think roughly speaking is the justice of the present case. We think that the plaintiffs ought to be entitled to redeem this property upon payment of the sum of Rs. 25,000, plus the sum found by the Court as damages for interference, plus the prior charges mentioned by the Court below, plus also a sum equivalent to all arrears of rent due by the tenants and not barred by limitation calculated up to the time when possession will be given. We also think that the general costs of the litigation of both sides ought to be borne by the plaintiffs. These remarks are only intended as a suggestion to the parties in the hope of ending the litigation.