

(1923) 04 AHC CK 0058
In the Allahabad High Court

Majid-Ud-Din and Another

APPELLANT

Vs

Ali Jan Khan and Another and Siraj-Ud-Din and Others

RESPONDENT

Date of Decision : 10-04-1923

Acts Referred:

Citation : (1923) ILR (All) 524

Hon'ble Judges : Pramada Charan Banerji, J;Gokul Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pramada Charan Banerji and Gokul Prasad, JJ.—This appeal arises out of a suit for sale on a mortgage. The mortgage was executed on the 19th of December, 1895, by Wahaj-ud-din and others for a sum of Rs. 30,000 in favour of two persons, Radha Mohan and Madan Mohan. The property mortgaged consisted of a certain pension and a number of houses. The mortgagees were, however, given the option of realizing Rs. 5,000, out of the principal, and interest thereon from the houses mortgaged. The interest on the Rs. 25,000 was payable out of the pension charged and the balance of interest and also the principal were to be paid by the mortgagors.

2. It appears that on, the 24th of April, 1918, the mortgagees sold Rs. 5,000, and interest thereof, out of the mortgage money to the plaintiffs, the heirs of one of the mortgagors, namely, Abdus Samad, for a sum of Rs. 5,000. The purchasers now sued for recovery of the Rs. 5,000 principal debt and the interest thereon, the total of which now amounts to Rs. 34,000 by sale of the houses mortgaged. The appellants before us, who are some of the purchasers of parcels of mortgaged property, raised several defences in the lower court. All these defences have been overruled and they come up in appeal. The first point raised by them is that the integrity of the mortgage lifts been broken up by the act of the mortgagees themselves, and hence they cannot recover more than the proportionate amount due from the houses in possession of the appellants. The facts are these. It appears that on the 24th of January, 1907, the heirs of Wahaj-

ud-din, one of the mortgagors who was admittedly the sole owner of the property mortgaged, sold a house to one Tasadduq Husain for Rs. 400. Out of this amount Rs. 200 were paid to the mortgagees who thereupon released that house from any further liability under the mortgage. This, it is claimed by the appellants, amounted to a disruption of the integrity of the mortgage. This point is covered by direct authority, and it has been held that if a mortgagee releases a portion of the mortgaged property by receiving the amount of money alleged to be due from such property, he does not thereby break the integrity of the mortgage nor does it entitle the mortgagor to redemption of a portion only of the property. They have, in other words, followed the rule that the integrity of the mortgage can only be broken up in case the mortgagee or mortgagees purchase a part of the mortgaged property. See the case of *Lachmi Narain v. Muhammad Yusuf* ILR (1894) All. 63.

3. The next point urged by the learned vakil for the appellants is that an acknowledgment made in 1907 by the then guardian of Wasi-ud-din, a minor, does not amount in law to a valid acknowledgment, and, therefore, the suit on the mortgage in dispute instituted on the 19th of December, 1895, is now barred by the 12 years rule of limitation. Section 21 of the present Limitation Act (No. IX of 1908) is a sufficient answer to this contention.

4. The third point raised before us is to the effect that the properties Nos. 1, 3, 5, 16, 24, 26 and 39 were not mortgaged and a decree for their sale was therefore wrong. The plea as to property No. 5 has been abandoned here as it was taken under a misapprehension. We have been referred to the evidence as to some of these items and there is nothing in that evidence to warrant us in coming to a conclusion different from that of the court below which had in some cases visited the locality itself to test the correctness of the boundaries. The appeal on this ground also fails. We have not been shown sufficient reasons to come to a different conclusion from that arrived at by the trial court. We, therefore, dismiss this appeal with costs.