(1920) 03 AHC CK 0044

In the Allahabad High Court

Muhammad Mushtaq Ali Khan and Others APPELLANT

Vs

Bankey Lal and Others RESPONDENT

Date of Decision : 17-03-1920

Acts Referred:

Transfer of Property Act, 1882 — Section 84

Citation : 55 Ind. Cas. 991

Hon'ble Judges : Grimwood Mears, C.J;Rafique, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. This appeal arises out of a suit brought by the plaintiffs appellants in the Court below for redemption of a mortgage, dated the 31st of March 1880. The mortgage was executed by one Musammat. Intizam-un-nissa Begam in lieu of Rs. 17,000. The mortgage was usufructuary and was given to one Santu Prasad, Both the mortgagor and the mortgagee is dead. The plaintiffs-appellants represent the mortgagor and the defendants-respondents represent the mortgagee. On the 30th of June 1916 the plaintiffs sent a notice to the defendants offering to pay Rs. 17,000 to them and asking for redemption. The defendants sent no reply. On the 30th of June 1916 the suit out of which this appeal has arisen was instituted by the plaintiffs for the redemption of the mortgage of 1880. Several objections were taken to the suit, one of which was that the suit was premature, inasmuch as no legal tender had been made. The learned Subordinate Judge yielded to this plea and dismissed the suit. He also held that the offer by notice, even if it were considered a good offer, was made a the wrong time and was against the terms of the mortgage deed. In appeal to this Court both pleas decided by the Court below are contested. It is argued on behalf of the plaintiffs appellants that the offer to redeem the mortgage by notice amounted to a legal tender of the mortgage money. We are unable to agree with this contention. A similar point was raised in the case of Chetan Das v. Gobind Saran 22 Ind. Cas. 659 : 36 A. 139 : 12 A.L.J. 111 and a Bench of this Court held that "an offer by letter of the amount due under a mortgage is not a good

tender within the meaning of Section 84 of the Transfer of Property Act. It is necessary that the money should be actually produced, unless it could be shown that the person entitled to receive the money has waived this condition." In the present case it is not stated that the money was actually produced or tendered to the defendants and redemption asked. Nor is it shown that the defendants waived their right of receiving the money and agreed to accept the notice in lieu thereof. We think the learned Subordinate Judge was right in holding that no proper tender had been made by the plaintiffs as required by law.

2. We think that the second contention for the plaintiffs, that a tender made in June would be a valid tender, is right if made within time--the end of June.

3. The appeal, therefore, fails and is dismissed with costs, including fees in this Court on the higher scale. In calculating the costs of this Court the office will exclude the cost of printing the evidence on behalf of the respondents, as that evidence was not necessary for the disposal of the points raised in this appeal.