

(1907) 05 CAL CK 0014
In the Calcutta High Court

Nandu Sahu and Others

APPELLANT

Vs

Ram Lakhan Singh and Others

RESPONDENT

Date of Decision : 15-05-1907

Acts Referred:

Citation : 2 Ind. Cas. 633a

Hon'ble Judges : Mitra, J;Caspersz, J

Bench : Division Bench

Judgement

1. The facts relating to the dispute between the parties are stated in the judgment of this Court bearing date the 6th August 1904. The effect of that judgment, as regards the mutual relations of the parties, is that the plaintiffs were mortgagor's and were entitled to redeem the mortgage executed on the 18th August 1888. The principal intermediate transactions, by which the proprietary right in the hypothecated property was alleged by the defendants to have passed to them, were held by this Court to be inoperative. The case was sent back to the lower Court for taking an account as if an account was to be taken in an ordinary redemption suit. The defendants were held to be entitled to the costs up to the date of the decree of this Court on the basis of their having been mortgagees. The mortgagors, the plaintiffs, were held to be entitled to redeem.

2. On remand the lower Court has taken accounts between the parties and has given a decree substantially in favour of the plaintiffs.

3. The defendants have appealed to this Court, and the main questions urged before us relate to the principle on which the accounts should have been taken.

4. The mortgage money was Rs. 4,000, and the mortgagees obtained the interest on the mortgage till the year 1293 from the previous zurpeshgidar. In 1294, the mortgagors got into possession, notwithstanding the zurpeshgi, in favour of the mortgagees, by virtue of a katkina lease executed on the 5th March 1887 by the mortgagees. The conditions of the katkina were that the plaintiffs,

the mortgagors, would remain in possession, pay Government revenue, pay, also, to themselves rupees two hundred and sixty-five as huq-ajiri, and pay to the mortgagees, the sum of Rs. 375 as katkina rent which, would include the interest payable on the mortgage money, namely, Rs. 300.

5. The mortgagors never paid the katkina rent. The rent for the year 1294 was, however, realised by the mortgagees by suit. It is not necessary, therefore, to take into consideration the liability of either party for that year. From the year 1295 to 1298, the katkina subsisted. But the mortgagors paid nothing in the shape of katkina rent. The lessors instituted a suit, but could not realise the amount due under the decree obtained by them.

6. Two questions arose with reference to the amount realisable for the period from 1295 to 1298 B.S. : (1) Are the mortgagees entitled to get Rs. 300 per annum? (2) Are they entitled to Rs. 75 and interest?

7. The Subordinate Judge has held that they? were entitled to Rs. 375, that is, interest of Rs. 300 and profit of Rs. 75 inasmuch as under the katkina they were the lessors, But he has held that as their right, qua lessors(could not be exercised in the present suit for redemption, they must lose not only the profit of Rs. 75 per annum but also the interest payable on the mortgage.

8. We cannot accept this view of the relations between the parties. The mortgage subsisted and this Court directed that an account should be taken as in an ordinary redemption suit. The interest payable on the mortgage, Rs. 300 but not the profit of Rs. 75, was realisable as payment which was to be made to the mortgagees as such. There is no reason why interest should not be allowed to the mortgagees. We are, therefore, bound to allow the mort-gagees interest Rs. 300 per annum from the year 1295 to 1298. The account taken in the lower Court should be modified by an additional Rs. 1,200 with interest at the rate of 12 per cent. from the end of each year on Rs. 300.

9. As for the subsequent period, that is the period from the year 1299 to the middle of the year 1312 when the defendants got info possession, there is no question that the mortgagees were bound to pay rupees 265 as huq-ajiri to the mortgagors. They are entitled to interest on this sum annually, that is to say, inasmuch as the mortgagees who were in possession did not pay Rs. 265 per annum, they were bound to pay interest on account of default in payment of such sum.

10. The principle which we think reasonable to adopt is that, in the first instance, the sum of Rs. 265 should be deducted annually from the sum of Rs. 1,200 with such interest as might accumulate on it at the rate of 12 per cent. per annum; when the sum of Rs. 1,200 is paid off by deductions of Rs. 265 per annum, this sum is to be deducted annually from the sum of Rs. 4,000 and interest calculated annually on the remainder at the rate of 10 annas per cent. per month. The account should be taken here on this basis.

11. The learned vakils for the parties have agreed that they will try to work out what the amount would be, and intimate to us the result of their calculations.

12. As regards costs, the mortgagees, defendants, are entitled under the decree of this Court to the costs up to that date, that is to say Rs. 410, annas 9 and pies 6 and Rs. 591, annas 8 and pies 8, altogether, Rs. 1,002, annas 2 and pies 2. They are also entitled, as mortgagees in the suit for redemption, to the costs of the lower Court after the remand by this Court that is, to Rs. 370. We make no order as to the costs of this Court.