
(1933) 01 CAL CK 0036
In the Calcutta High Court

Pranballav Saha and Another

APPELLANT

Vs

Bhagaban Chandra Seal and Others

RESPONDENT

Date of Decision : 06-01-1933

Acts Referred:

Registration Act, 1908 — Section 17(2)(11)

Citation : AIR 1933 Cal 588 : 145 Ind. Cas. 657

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Judgement

Mukerji, J.—In 1323, the predecessors of defendants 1 to 4 executed a mortgage in plaintiffs' favour in respect of certain properties on taking a loan of Rs. 895. In 1334 the plaintiffs released some of the properties on receiving Rs. 1,000 from the mortgagors and made an endorsement to that effect on the back of the mortgage bond. Defendant 8 had in the meantime purchased one of the properties, not one amongst the properties subsequently released. The plaintiffs instituted the suit for enforcing the mortgage security for the principal and interest due after deducting the amount, received by them and against all the mortgaged properties. In the plaint however he averred that he had released, some of the properties as aforesaid. The suit was contested by defendant 8 alone who was impleaded on the allegation that the plaintiffs had come to know of his purchase only a few months before the suit. The Munsif made a decree for sale in respect of all the mortgaged properties on the basis of the mortgage as it originally was. It is obvious that such a decree in respect of all the mortgaged properties was wrong, because the mortgagee himself had previously released some of the properties on receipt of Rs. 1,000. From the decree made as above defendant 8 preferred an appeal. Before the Subordinate Judge the plaintiffs conceded that the decree for sale of all the properties could not stand and prayed for an amendment of the plaint by asking for a sale of the properties not released. The Subordinate Judge allowed the prayer.

2. In dealing with the contentions of defendant 8, the appellant in the appeal

before him, the Subordinate Judge held that the endorsement by which the release was made required registration and not having been registered was not admissible in evidence. He held that therefore the release was to be treated as made on the date on which the plaint which contained the admission about the release was filed. He held also that as the plaintiff admittedly had knowledge of the purchase of defendant 8 on the date of the suit, and so before the date of tb.3 release as he found it, the case attracted the principle that if a mortgagee releases one or more of the mortgaged properties with the knowledge that there has been change, of ownership as to some or all of the properties, then the properties which remain liable are only liable for such part of the mortgage debt as is proportionate to their value at the date of the mortgage. He held therefore that defendant 8 would be entitled to redeem his own property only and on payment of the proportionate mortgage debt. On this basis the Subordinate Judge has made a decree for sale of the properties which are un-released. The plaintiff has then preferred this second appeal. A number of decisions of the different Courts, not wholly consistent with each other, have been cited before me on behalf of the appellant on the meaning of Section 17, Sub-section (2), Clause (11), Registration Act. I do not propose to discuss them here as none of them has directly decided a case in which the receipt of the money which is the subject-matter of the endorsement purported to extinguish a mortgage entirely in respect of a part of the mortgaged properties. But giving the question the best consideration I could I have come to the conclusion that the expression when the receipt does not purport to extinguish the mortgage "should be read as it is and that no words such as" in whole or in part "or in respect of some or all of the mortgaged properties in their entirety" can be read as qualifying that expression. I am inclined to take the view that as only some of the mortgaged properties purported to have been released by the endorsement, the mortgage itself was not extinguished and so the endorsement falls within Sub-section (2), Cl.(II), Section 17 and required no registration.

3. In the view that I have taken as above the position has been simplified and the only question that I have to consider is whether the defendant is entitled to redeem his property only, when subsequent to his purchase the plaintiffs granted the release in respect of some other of the mortgaged properties. It has been strenuously contended that it is only when the mortgagee grants a partial release with knowledge of the change of ownership of a part of the whole of the mortgaged properties that a partial redemption is to be allowed, and that where he does so without any such knowledge the transferee has no equities in his favour on which he can rely for claiming such partial redemption. I have not been able to discover any authority directly bearing on this question. Of course there is abundant authority for the proposition that where the mortgagee has granted the release with such knowledge the release should have the same effect as a purchase of the release properties by the mortgagee himself and so a partial redemption must be allowed. In my opinion, the argument that where knowledge is not proved, the transferee must redeem the mortgage in its entirety as it

stands after the release, cannot be accepted as sound on principle. Redemption of the whole, in my opinion, can only be insisted on where the transferee acquires his interest with knowledge of the release: when he has such knowledge or at all events when he ought to have had such knowledge, he can have no higher rights than what his vendor, the mortgagor, himself has. But in cases where the transferee could never have knowledge of the release as in the present case where the release took place after the transfer, he is in a different position. A mortgage is not to be regarded as a prohibition against transfer. An innocent transferee of a part of the equity of redemption too has his rights protected on equitable considerations.

4. In my judgment, such a transferee is entitled to urge on equitable grounds that when he took the transfer there was one indivisible mortgage, and when after he acquired an interest in the equity of redemption, the integrity of the mortgage was broken by the mortgagee and the mortgagor behind his back he is entitled to a claim a partial redemption, the mortgagee himself being no longer competent to rely on the integrity of the mortgage. It should not be overlooked that the mortgage security, as a whole, is no longer enforceable by reason of the release itself, and it is only a deformity of it that is being sought to be enforced as a whole by the mortgagee. The mortgagee having by his own act in granting the release, made it impossible for the transferee to redeem the original mortgage as a whole on the basis of which the equity of redemption which he purchased has to be judged, he is, in my judgment, entitled to claim a partial redemption. On all these considerations, I am of opinion that the decision of the learned Judge as to partial redemption is right. I accordingly dismiss this appeal with costs. Leave to prefer an appeal under the Letters Patent is granted.