

(1936) 08 AHC CK 0010
In the Allahabad High Court

Raghubir Singh and Others

APPELLANT

Vs

Panchaiti Akhara Bara Udasin Nirwan and Another

RESPONDENT

Date of Decision : 06-08-1936

Acts Referred:

Citation : AIR 1937 All 44

Final Decision : Allowed

Judgement

1. This is a first appeal by Raghubir Singh and others who were defendants 8 to 23 in a suit for sale on a simple mortgage. The mortgage was dated 22nd October 1907 and was for Rs. 11,000. The mortgagors were defendants 1 and 2 and the predecessors of defendants 3 to 7, so that defendants 1 to 7 now represent the mortgagors. On 9th January 1921 the mortgagors executed a sale-deed of about half their property in favour of the appellants Raghubir Singh, and others. This document is printed on pp. 31 and 32. The sale consideration was Rs. 24,000. Of this Rs. 21,800 was left with the vendees "so that they should pay the amount to Babu Dharam Das and get the sold property released from the mortgage." It is to be noticed that this-payment was not to discharge the entire mortgage-debt which was by calculation about Rs. 28,000 due at that period. Subsequently on 19th April 1926 the mortgagors sold to the mortgagee one item of property and it is admitted that the result of this sale was to break up the integrity of the mortgage. Consequently u/s 60, T.P. Act, the appellants, who are interested in a part of the mortgaged property, acquired a right to redeem their town property on payment of a proportionate part of the amount remaining due on the mortgage. The plaint set out that certain payments had been made to the plaintiffs by the appellants amounting in all to Rs. 20,378, but these payments had not been made on 9th January 1921 when the appellants took the sale-deed from the mortgagors and undertook to make the payment of Rs. 21,800. On the contrary the payments of the appellants were spread over a number of years up till 5th May 1932. The suit was brought on 7th January 1933. The sole payments made by the mortgagors, defendants 1 to 7, were one small payment in cash, Rs. 275 and a remission of Rs. 194-3-6, and also a payment of Rs. 8,000 by

execution of the sale-deed of 19th April 1926, and a further payment of Rs. 1,000 by instalments. The suit therefore was brought for the balance of Rs. 17,114-11-0. The defendants 24 to 27 are subsequent transferees of a portion of the mortgaged property. The written statement of the original mortgagees, defendants 1 to 7, contained a plea, para. 17, that their vendees, the appellants, were liable for the entire amount because it was alleged that the principal and interest had accumulated on account of their default. This however does not appear to be arithmetically accurate, The chief defence of the appellants, in para. 16 was that the plaintiff should bring a claim for a proportionate amount of the mortgage money in respect of the different items of property. The Court below has repelled this suggestion and has passed a joint decree against all the defendants and against all the mortgaged property for the total sum now due to the mortgagees, that is Rs. 19,111-14-0.

2. The chief point which has been argued before us in appeal is whether this joint decree should stand or whether the amount should be split up. Further whether the amount is to be split up in a manner so as to be proportionately divided. It is dear that u/s 60, T.P. Act, the appellants have the right to redeem their share on payment of a proportionate part of the amount remaining due on the mortgage. The argument has been put forward therefore for the appellants that the amount due should be divided proportionately to the value of the different items of the property. On the other hand the original mortgagors have claimed that the division should be made in proportion to their liabilities under their sale-deed. We consider that the latter course is the best as this will finally determine the rights of the mortgagors and their vendees, the appellants. Accordingly we direct that a calculation shall be made in the following manner: The office will calculate the amount of principal and interest on Rs. 21,800 from 9th January 1921 up to a date six months from this order. Eleven annas per cent per mensem is taken, as this is the interest in the original deed of mortgage. The office will then calculate the payments made by the appellants on the different dates and the interest at 11 annas per cent per mensem on those payments up to the present date. The difference between these two totals will be the sum for which the appellants will be liable. The sum for which the original mortgagors, defendants 1 to 7, will be liable will be the total amount now due under the decree for the mortgage, principal and interest, less the amount due from the appellants.

3. As regards costs the plaintiff is entitled to his full costs in the Court below and we consider that as the appellants ask that the plaintiff's suit should be dismissed against the appellants, the plaintiff was a necessary party in this Court on such a pleading and therefore the plaintiff will be allowed his costs of appeal against the appellants solely. As regards the costs of the plaintiff in the Court below, we consider that the appellants and the defendants 1 to 7 should pay the costs of the plaintiff in proportion to the amounts" which they are ultimately found due to pay. The question of the reduction of interest under the Agriculturists' Belief Act is left for the execution department. In the Court below each set of defendants will pay their own costs and in this Court appellants will

receive costs from the mortgagors, defendants 1 to 7.