(1941) 01 PAT CK 0020

In the Patna High Court

Ram Kirpal Choudhury and Others APPELLANT

Vs

Baleswar Choudhury and Others RESPONDENT

Date of Decision : 02-01-1941

Acts Referred:
Evidence Act, 1872 — Section 192

Citation : AIR 1941 Patna 246

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—This appeal is by the plain-tiffs and arises out of a suit to enforce a mortgage executed by defendant in favour of plaintiff 1. The defence was that the mortgage debt had been repaid except as to Rs. 85, and reliance was placed on a receipt purporting to have been signed and to bear the thumb impression of plaintiff 2, brother of plaintiff l. The Court below has found that the signature and the thumb impression on the receipt are of plaintiff 2 and has dismissed the plaintiffs'' suit.

2. The first point raised in second appeal is that in view of the fact that the mortgage deed contained a stipulation that the only evidence which the parties could rely upon in support of any payments made in satisfaction of the mortgage debts would be payments endorsed on the mortgage deed itself, it is not open to the defendants to rely on evidence other than the endorsements on the mortgage bond.

3. In support of this contention reference is made to Khub Lal Chaudhuri and Others Vs. Bechan Mandal and Others, . There was a similar stipulation in the bond that was the subject-matter of that litigation. The defendant however did not plead payment of the mortgage debt in cash but that the mortgage debt had been discharged under a subsequent agreement between the mortgagor and the mortgagee. The Court held that as the mortgage bond was a registered document none of its terms could be altered or modified except by means of a registered document, and Section 192, Evidence Act, was a bar to the admission

of any other evidence for the purpose of shewing any alteration or modification of the terms of the bond; but with regard to whether the mortgagor can prove the discharge of the debt by oral evidence the Court said:

It is always open to a mortgagor to prove that on a certain day he paid the sum due under the mortgage. Such is not evidence of a subsequent oral agreement varying the terms of the mortgage.

4. That is what the defendant has done in this case, and clearly the case relied upon is not an authority for the proposition advanced by the learned advocate for the plaintiff-appellants. The next point raised on behalf of the appellants is that the payment to Ramautar did not discharge the mortgage debt. As I have already stated the bond was executed in favour of plaintiff 1 who is the karta of a Hindu joint family. Ramautar who granted the receipt is a younger brother of plaintiff 1. The case of the defendant was that plaintiff 1 was in the employment of a certain mohunt and that during the absence of plaintiff 1 his duties as manager of this family were discharged by Ramautar. The Court below has accepted the defendant''s evidence on this point. The defence and the findings amount to this that Ramautar as agent of the karta of the family during the latter''s absence accepted payment of the mortgage debt and granted the receipt. In my opinion, in such circumstances the receipt constitutes a valid discharge for the debt.

5. It is contended however that this view is opposed to the decision in Ankalamma Vs. B. Chenchayya and Others, . The facts of that case were that a mortgage was executed in favour of V. In a suit on the mortgage the defendant relied upon a receipt in respect of the mortgage debt granted by C, the son of v. The defendant alleged that there had been a partition in the family of the mortgagees and that the mortgage bond in suit had fallen to the share of G who had been repaid by the mortgagors and had granted them a receipt. It was found as a fact that there bad been no partition in the family of the mortgagees as alleged by the defendant. It was not the case of the defendant that c was the manager of the family but in second appeal in the High Court it was sought to shew that C was actually managing the family affairs. The learned Judges held that the circumstances in the ease negatived any such presumption but suggested, on the other hand, that each member of 6he family was endeavouring to grab as much of the family property as he could. In these circumstances, they held that C was not managing the family affairs.

6. Reference was also made to two decisions of this Court. The first of these Banamali Satpathi v. Talba Ramhari Patra AIR 1920 Pat. 464 was a case in which it was held that one of the heirs, or an assignee of one of the heirs of a deceased mortgagee, is not competent to grant a release of the entire mortgage debt.

7. The second case is that in Syed Abbas @ Aboo Saheb and Others Vs. Misri Lal and Others, in which it was held that payment to one of two mortgagees is not a discharge of the mortgagor''s liability to the other. These cases are not authority

for the proposition that payment to a mortgagee''s agent is not a discharge of the mortgage debt.

8. There is no other point in this case and no merit in the appeal which is dismissed with costs.

