(1927) 06 PAT CK 0020

In the Patna High Court

Ramkripal Das APPELLANT

Vs

Rajendra Singh RESPONDENT

Date of Decision : 06-06-1927

Acts Referred:

Citation : AIR 1927 Patna 388

Hon'ble Judges : Das, J;Allanson, J

Bench : Full Bench

Judgement

Das, J.—This appeal arises out of a, suit instituted by the respondent to enforce a mortgage executed in favour of the respondent on the 15th September. 1910. The mortgage was for Rs. 13,000, the rate of interest being Re. 1-2-0 per cent, per month with yearly rest. The money was borrowed for the following purposes:

(1) to sasisfy Narayan Sahu''s decree against the mortgagor for Rs. 11,400;

(2) to satisfy, Mr. Wilson''s decree against the mortgagor for Rs. 1,500; and

(3) to raise Rs. 100 for the mortgagor.

2. Rupees 100 was actually paid to the mortgagor and this is not disputed before us. Rs. 12,900 remained with the mortgagee and it was his duty to satisfy the claim of Narayan Sahu and Mr. Wilson in terms of the mortgage-deed. It is not disputed that the mortgagee did satisfy the claim of Mr. Wilson; and the only question is whether the plaintiff is entitled to a decree in respect of Rs. 11,400 which was to be paid by him in satisfaction of Narayan Sahu''s decree.

3. The material term in the mortgage-bond in regard to Narayan Sahu''s decree is as follows:

I, the declarant, have got to pay Rs. 11,400, the decretal money, principal with interest and costs, in Court up to this day under a decree passed by the Court of the Sub-Judge at Dar-bhanga on 17th December 1908, in Regular Suit No. 29 due under a mortgage bond dated 4th March 1901, for satisfaction of which

Narayan Sahu and others, decree-holders, have-got properties of considerable value, i.e., the mortgaged property covered by the said decree'' sold by auction in the'' Execution Case No. 30 of 1909, on 15th December 1909, by taking surreptitious proceedings. For setting; aside the said sale a petition on behalf of me, the declarant, has been filed in the said Court and Case No. 3 of 1910 is still pending* * * * I have left the remaining RP. 12,900 in deposit with the said Mahajan on condition that out of the same he should pay Rs. 1,500, the remaining declarant money due, to Mr. J.A.M. Wilson through self and get a petition noting; full payment of the decretal money in Execution Case No. 125 of 1910, filed in the Court on behalf of the said decree-holder with a view to get the property under sale exempted from being sold by auction, and having paid the remaining; decretal money amounting to Rs. 11,400 to Narayan Sahu and others, decree-holders, through self under an arrangement arrived at amicably he should get a petition noting full satisfaction of the decretal money and praying; for setting aside the sale held on 15th December 1909, and for striking off the execution case with, a note of full payment of the decretal money filed ft Court on behalf of the said decree-holders, or under order of the Court deposit the same into the Treasury of the Court. In case the decretal money due to Narayan Sahu and other decree-holders, is not received by them, and the same is not deposited into the Treasury of the Court, and in case the said sale is not set aside, the said Mahajan, Babu Rvjendra Singh, shall keep Rs. 11,400 with him, and I, the declarant, shall pay interest on Rs. 11,400 aforesaid up to 30th Baisakh 1318, Fasli, at the aforesaid rate. On the expiry of 30th Baisakh of the aforesaid year, I shill not be bound to Jay interest on Rs. 11,400, nor shill the said Mahajan ba entitled to get interest for the same from me, the declarant.

4. Now the facts in connexion with Narayan Sahu''s decree are as follows:

The claim of Narayan Sahu amounted to Rs. 11,400 and he executed his decree and caused certain properties belonging to the mortgagor to be sold in execution of that decree. The mortgagor had instituted proceedings for setting aside the sale and it was anticipated that that application would succeed: and Rs. 11,400 was borrowed from the present plaintiff to pay off Narayan Sahu in case the sale in his favour was set aside. The mortgagor stipulated in clear terms that should the sale in favour of Narayan Sahu be not sat aside, then it would be contrary to the duty of the mortgagee to pay that; money into Court. It was, therefore, agreed between the parties that should the sale in favour of Narayan Sahu be not set aside, then the mortgagee would only be entitled to interest upon that sum up to the 30th Baisakh 1318. Now it appears that the sale in favour of Narayan Sahu was not set aside; but, notwithstanding this, the mortgagee paid the entire sum into court and most of the money was attached in execution of decrees obtained by other parties as against the mortgagor. The money was paid to the credit of the mortgagor and was seized by other creditors, and the question arises whether the plaintiff is entitled to recover Rs. 11,400 with interest from the mortgagor. In my opinion he is not entitled to recover that sum. There was clearly a breach of agreement in so far as he paid the money into court to the credit of the mortgagor. The result is that all that money is gone under circumstances not contemplated by the mortgagor and the mortgagor is clearly entitled to hold the mortgagee to the term of the agreement between them to the effect that.

in case the decretal money due to Narayan Sahu and other, decree-holders, is not received by them and the same is not deposited is to the Treasury of the court, and in case the said sale is not set aside, the said Mahajan Babu Rajendra Singh, shall keep Rs. 11,400 with him and I, the declarant, shall pay interest on Rs. 11,400 afore said up to 30th Baisakh 1318, Fasli, at the aforesaid rate. On the expiry of 30th Baisakh of the aforesaid year, I shall not be bound to pay interest on: Rs. 11,400, nor shall the said Mahajan be entitled to get interest for the same from me, the declarant.

5. The learned Subordinate Judge points out that the judgment-debtor Damodar Das himself took away Rs. 2,000 out of the sum deposited by the plaintiff. He is obviously referring to Order No. 32 in the order-sheet in Execution Suit No. 309 of 1909. That order runs as follows:

Payment order for Rs. 2,000 only issued to judgment-debtor through his Pleader, Babu Sheo Prasad.

6. The learned vakil for the respondent also refers to Order No. 33 which runs as follows:

Payment order for Rs. 3,967-2-9 only issued to Babu Brahtnadeo Narain, Pleader for the judgment-debtor.

7. The learned Subordinate Judge did not think that Order No. 33 related to a withdrawal of money by the judgment-debtor; but Order No. 32 clearly refers to that. But we do not know whether Sheo Prasad was authorized by the mortgagor to withdraw Rs. 2,000 on his behalf and it is impossible to hold in this case that Rs. 2,000 was actually paid by the mortgagee to the mortgagor. The deposition of the mortgagor in a previous case has been put in as evidence in this case by the plaintiff.

8. In his previous deposition he said that he did not know what had become of the money deposited by the mortgagee into court and that he did not get it back.

9. In my opinion, the plaintiff is entitled to a decree in respect of Rs. 1,600 with interest at the bond rate up to the date fixed for payment and thereafter at 6 per cent, until realization and is also entitled to interest upon the sum of Rs. 11,400 up to the 30th Baisakh 1318, but he is not entitled to any decree in respect of the principal sum of Rs. 11,400 or interest upon that sum after the 30th Baisakh.

10. Let a decree be drawn up in this Court on the terms of this judgment giving the defendant six months for redemption. The parties are entitled to their costs in proportion to the success achieved by them both in this Court and in the court below.

Allanson, J.

I agree.

