
(1908) 11 AHC CK 0012
In the Allahabad High Court

Sadar-Ud-Din Ahmad and Others

APPELLANT

Vs

Chajju and Others

RESPONDENT

Date of Decision : 09-11-1908

Acts Referred:

Citation : (1909) ILR (All) 13

Hon'ble Judges : Richards, J; John Stanley, J; Banerji, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

John Stanley, Kt. C.J

1. The facts of this case are these. One Chajju executed a mortgage of certain property in favour of Husain Bakhsh and Nathu to secure a principal sum of Rs. 1,000, the mortgage being expressed to be made for a term of 25 years. In the mortgage there is a provision for redemption. The redemption clause provides that on payment of the amount due in the month of Jeth after the expiry of the term of 25 years the mortgage might be redeemed. The mortgagors refused to register the mortgage, and thereupon an application was made by the mortgagees for compulsory registration and compulsory registration was effected. Subsequently the mortgagees applied for mutation of names in the mutation department. To this, not merely Chajju, but another person named Abdulla objected. Abdulla, it will be noted, was no party to the mortgage. He claimed to be entitled to a share in the mortgaged property, and hence he objected to mutation of names so far at least as regarded his share. The dispute was compromised, the terms of the, compromise being that the whole of the property should be recorded as subject to the mortgage and that the names of the mortgagees should be entered as mortgagees in respect of it and the names of Chajju and Abdulla a mortgagors, It further provided that the mortgagors should have power in any Jeth to pay the mortgage debt and have the mortgage redeemed. The mortgagors sought redemption in pursuance of the terms of this compromise within the period of 25 years, and this was refused, and hence the

suit for redemption out of which this appeal has arisen.

2. The defence to the suit was that it was premature having been brought within the term of 25 years.

3. The first Court gave a decree for redemption, but upon appeal the lower appellate Court reversed the decree of the Court of first instance on the ground that the terms of the compromise in the Revenue Court varied the terms of the mortgage and the agreement not having been registered was not admissible in evidence and could not be treated as giving the mortgagor a power to redeem contrary to the express provision of the mortgage deed. From that decision the present appeal has been preferred, and it was laid before a Bench of three Judges in view of the decision in the case of *Nur Ali v. Imaman* 1884 WN 40 the correctness of which the Court before whom the appeal came was disposed to doubt.

4. It appears to me that the decision of the learned Additional Judge is correct. The compromise entered into in the mutation proceedings could not in my opinion have the effect of modifying or altering in any way the terms of the registered mortgage. The Revenue Court was concerned with the entry of names only and had no concern with the conditions upon which the objectors withdrew their opposition to the granting of the application for mutation. The compromise was not in fact submitted to the Revenue Court further than as showing the withdrawal of opposition to the mutation of names. The language of the order of the Court shows this. The Revenue Court in view of the withdrawal of opposition simply ordered that mutation should have effect. The words are "the parties have compromised and mutation will take place accordingly." The case appears to me to be unlike that of *Nur Ali v. Imaman* 1884 WN 40. It would be fraught with danger to the security afforded to titles by the Registration Act if a compromise of parties in proceedings taken before a Revenue Officer for mutation of names could be regarded as having the effect which is contended for here of creating a charge and modifying the provisions of a registered document. I would therefore dismiss the appeal.

Banerji, J.

5. I am of the same opinion. It is obvious from the terms of the mortgage of the 8th of August 1903 that it cannot be redeemed before the expiry of 25 years from the date of it. Those terms could not be varied except by a registered instrument. By the application presented in the mutation case the Revenue Court holding mutation proceedings was merely informed of an oral contract entered into by the parties. The application itself cannot be treated as creating a fresh mortgage. Can it be taken into consideration as evidencing an alteration in the terms of the original mortgage? I agree with the learned Chief Justice for the reasons stated by him that it cannot be admitted in evidence. I think the case of *Nur Ali v. Imaman* 1884 WN 40 is distinguishable. We were pressed with the decision in *Raghubans Mani Singh v. Mahabir Singh* ILR (1905) All. 78 to which I

was a party. That was a case to which in our judgment the observations of their Lordships of the Privy Council in *Pranal Anni v. Lakhshmi Anni* ILR (1899) Mad. 508 as contained in page 514 of the report, fully applied. In the present case the terms of the compromise were not referred to or narrated in the order of the Revenue Court, and indeed for purposes of mutation it was not necessary to refer to the terms of the mortgage or the conditions under which redemption could take place. This case therefore is not governed by the rulings to which I have referred. I also would dismiss the appeal.

Richards, J.

6. This was a suit for redemption of a mortgage, dated the 8th August 1903. The mortgage was a mortgage with possession, and it is quite clear that according to the terms of the deed the mortgage could not be redeemed until after the expiration of 25 years. It is contended on behalf of the plaintiff that the terms of the mortgage deed were subsequently varied by agreement between Chajju, the mortgagor, and Abdulla on the one side and the mortgagees on the other side, whereby it was arranged that Abdulla should be bound by the mortgage, but that the mortgage should be redeemable by payment of the mortgage debt in any year in the month of Jeth. The defendants objected that such an arrangement could only be proved by a duly registered document. No such document exists, but the "plaintiff"s contend that the petition to and the order of the Revenue Court referred to by the Chief Justice operate to vary the terms of the mortgage deed and that a registered document was not necessary. I quite agree in the judgment of the learned Chief Justice and I should not deem it necessary to add anything to what he has said save for the fact that reliance was placed on the riding in *Raghubans Mani Singh v. Mahabir Singh* ILR (1905) All. 78 to which I was a party. In that case certain lands were claimed on the basis of an agreement of compromise in prior litigation, whereby the title to the lands in question had been expressly admitted. The Judge had received and acted on the compromise and incorporated it into his decree. My learned colleague and I held that the plaintiffs could rely on the decree incorporating the compromise and that a registered instrument was not necessary. The facts of the present case are very different. They amount to no more than this, namely, that the Revenue Court ordered the defendant"s names to be recorded as mortgagees in possession, all opposition to the application being withdrawn. The facts in the present case much "more nearly approach the facts in the case of *Pranal Anni v. Lakhshmi Anni* ILR (1899) Mad. 508 in which their Lordships of the Privy Council held the unregistered deed of compromise inadmissible.

7. In the present case the plaintiffs in effect ask the Court to hold that the petition to the Revenue Court and its order operated to create a fresh mortgage. To entertain such a contention would be a very serious extension of the ruling of this Court in *Raghubans Mani Singh v. Mahabir Singh* ILR (1905) All. 78. I also would, dismiss the appeal.

8. The order of the Court is that the appeal be dismissed, but under the

circumstances without costs.