(1910) 05 AHC CK 0002

In the Allahabad High Court

Sayid Amir Husain APPELLANT

Vs

Musammat Imtiaz Fatima and Others RESPONDENT

Date of Decision : 18-05-1910

Acts Referred:

Citation : 6 Ind. Cas. 503

Hon'ble Judges : Karamat Husain, J

Bench : Single Bench

Judgement

Karamat Husain, J.—One Naqi Ali executed a mortgage of certain plots in favour of one Ata Husain on the 16th of November 1892. The mortgage-money was Rs. 100. The terms of the mortgage were that the mortgagee should realize the rents from the tenants of the land, should appropriate Rs. 7-8 to himself, and pay the balance of the rent amounting to one rupee to the mortgagor every year, and that on payment of the entire mortgage-money (kid zar-i-rehan) the mortgagor would be entitled to redeem. The representative-in-title of the mortgagor brought an action against the representative-in-title of the mortgagee for redemption and he claimed a deduction from the mortgage-money of Re. 1 a year. The Court of first, instance decreed the claim directing the plaintiff to deposit in Court Rs. 32 within 6 months. On appeal the-decree was reversed by the lower appellate Court which came to the conclusion that under the terms of the mortgage-deed the mortgagor was bound to pay the entire mortgage-money, i.e., Rs. 100. The lower appellate Court in its judgment says: This stipulation shows that although the mortgagee was to pay the profits remaining due after deducting Rs. 7-8, on account of interest on the mortgage-money, the said balance was not to be applied to the payment of the principal mortgage-money in case the mortgagee failed to pay it to the mortgagor. I mean to say that it was not stipulated that if the mortgagee fail to pay, the balance of profits should be set off against the mortgage-money at the time of redemption. Therefore, the mortgagor was at liberty to realize the balance of profits by means of suit or otherwise, and if it is still due, the mortgagor can recover it according to law, bat it cannot be considered to have been applied to the payment of the principal money under the terms of the mortgage." The plaintiff has preferred a second appeal and it is argued by his learned Vakil that the Court below has placed a wrong construction on the mortgage-deed, and that according to its terms, the profits of Re. 1 a year are to be deducted from the mortgage money and in support of this contention reliance is placed upon Jaijit Rai v. Gobind Teioari 6 A. 303. I am of opinion that the contention of the learned Vakil is well-founded. The right construction of the mortgage-deed is that the entire mortgage-money due with reference to the terms set forth, that is, after appropriating Rs. 7-8, in lieu of interest and after'' paying Re. 1 a year to the mortgagor, would be payable at the time of redemption and the ruling cited by the learned Vakil supports him.

2. The result is that I decree the appeal, set aside the decree of the lower appellate Court and restore that of the Court of first instance with costs.

