
(1921) 02 AHC CK 0030
In the Allahabad High Court

Sheikh Habibul Rahman

APPELLANT

Vs

Musammat Rasul Bandi and Another

RESPONDENT

Date of Decision : 10-02-1921

Acts Referred:

Limitation Act, 1963 — Section 20

Citation : AIR 1921 All 81 : 62 Ind. Cas. 859

Hon'ble Judges : Tudball, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Tudball, J.—This application arises out of a suit brought by the plaintiff applicant to recover his mortgage money. According to him he took a mortgage from the defendant of a certain plot of land for a sum less than Rs. 100. Possession was delivered to him and he continued in receipt of the profits of the mortgaged property until recently, when the defendant unlawfully ejected him, and he is now seeking to recover his mortgage-money. He put forward a bond which was unregistered. The Court below framed five issues, of which the fourth was:

Is the suit barred by limitation?

2. The defendant did not admit the allegations of fact in the plaintiff's plaint. The Court did not go into the question of fact. It held that the document being unregistered, there was no mortgage and, therefore, Section 20 of the Limitation Act did not help the plaintiff and, therefore, the suit, No. 36, having been brought in 1920, was barred by time. The Munsif is clearly wrong, because the fact that the document was unregistered does not affect the case at all. If the plaintiff's allegations of fact be correct, then the mere fact that the property was delivered to him as security for the money and he was placed in possession thereof and continued to enjoy the profits thereof, would constitute the mortgage, whether there was a document or whether there was not; the mere fact of the document having been written and not having been registered does

not destroy the mortgage, which was created by the payment of the money and by the delivery of the property. Therefore, the ground on which the Court below has decided the fourth issue is incorrect. I, therefore, allow the application and set aside the decree of the Court below. The case will be returned to that Court for re admission and for decision of all the facts of the case and of the issue of limitation after it has found the facts. I do not hold that the suit is not barred by limitation. If it is found that as a matter of fact possession was not given to the plaintiff and he has not been in the enjoyment of the profits, his suit will clearly be long barred by time, but the decision of the point depends wholly and solely on the facts. The costs of this application will be costs in the cause and will abide the result.