

(1918) 04 CAL CK 0032
In the Calcutta High Court

Sripati Lal Dutt and Others

APPELLANT

Vs

Sarat Chandra Mondal and Others

RESPONDENT

Date of Decision : 23-04-1918

Acts Referred:

Citation : 46 Ind. Cas. 78

Hon'ble Judges : Syed Shamsul Huda, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal by the plaintiffs against the decision of the learned District Judge of Bankurah, dated the 21st March 1916, reversing the decision of the Subordinate Judge of the same place. The plaintiffs brought the suit to enforce a mortgage. The learned Judge in the lower Appellate Court held on reading the mortgage-deed that the suit was barred by limitation. The question is one that has arisen in other cases in this Court. Every case must, of course, turn on the construction that the Court places on the mortgage-deed in that particular case. In the present case, the plaintiffs lent a certain amount of rice to the mortgagees and there was the usual covenant in the case of repayment and interest and the bond also provided that, if default was made in the kists, the mortgagees would be competent to realise the money which would be due at the rate of Rs. 6 per map and that the realization might be made by sale of the mortgaged property mentioned in the schedule to the bond and of all other moveable and Immovable properties belonging to the mortgagors. The bond further recites that "as security for the payment of the said paddy", that means payment according to the value mentioned, namely, Rs. 6 per map, "I do again mortgage by this document the properties which I mortgaged to you in the mortgage bond of the aforesaid year and date by keeping intact the title of said mortgage." The point made is that there is no question of money in this case, that this is not a suit to recover money charged on the mortgaged properties but it is a suit to recover rice charged on the mortgaged properties. I very much doubt, if I may say so without disrespect, whether it is a suit to recover rice. The primary object of the suit is to recover money and I suppose that what the

plaintiffs want in this case is money and not rice and what the Court will give them will be money and not rice, if they succeed in the suit. Whatever may be decided in the case which is generally referred to, namely, the decision of Sir Lawrence Jenkins, C.J., in the case reported as Rash Bihari Das v. Kunja hari Patra 37 Ind. Cas.05 : 24 C.L.J. 348, as I remarked the other day. Mr. Justice Mookerjee in the case reported as Nilmony Singha v. Haradhan Dass 13 C.W.N. clxxxiv (184) took a different view on the ground that the case before him was distinguishable from the case before Jenkins, C.J., in that there was a certain amount of cash money in the mortgage which was the subject-matter of the case before him. The present case is also distinguishable from the case before Chief Justice Jenkins, on the ground that in this case the mortgage provides that money is to be recovered at the rate of Rs. 6 per map if any proceedings are taken to enforce the mortgage. It seems to me that that money is a charge on the mortgaged property. I do not agree with the view taken by the learned District Judge. In my opinion, the judgment and decree of the learned District Judge must be set aside and the case remitted to the lower Appellate Court to have the appeal re-heard on the other points not disposed of. Costs will abide the result of the re-hearing by the learned Judge of the lower Appellate Court.

2. This case was decided on Exhibit I only. All other documents filed in the case will be considered at the time of the re-hearing.

Syed Shamsul Huda, J.

3. I agree.