

(1926) 04 AHC CK 0037
In the Allahabad High Court

Tikam Singh and Others

APPELLANT

Vs

Hargobind

RESPONDENT

Date of Decision : 20-04-1926

Acts Referred:

Citation : AIR 1926 All 574 : 95 Ind. Cas. 854

Hon'ble Judges : Lindsay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Lindsay, J.—We are of opinion that the judgment of the District Judge in this case is correct. The question before him was whether Har Gobind, who was impleaded as a defendant in a suit for sale on a mortgage, was entitled to put forward the defence that he had purchased the land free of all incumbrances including that of the plaintiffs.

2. The plaintiff's mortgage bears date the 7th February 1910. Before that the owner of this land, Mt. Lado, had taken a takavi loan from Government on the 10th March 1901 under the provisions of the Land Improvement Loans Act (XIX of 1883).

3. Having failed to repay the loan to the Government, the property was sold by the Government and was purchased by Har Gobind. Section 7 of the Land Improvements Loans Act provides for the recovery of takavi loans. The question which was before the learned Judge, and which has been raised again before us, is whether, when the Government took steps to realize the loan they were acting under Clause (c) or Clause (d) of Sub-section (1) of Section 7 of the Act. Clearly, if action was taken under Clause (c), the contention of Har Gobind was correct because in that case, having regard to the language of Section 161 of the Land Revenue Act, which has to be read along with Section 7 of the Land Improvement Loans Act, the sale must necessarily be free of all incumbrances.

4. The plaintiffs contended that the sale which took place under the orders of the

Government was under Clause (d) and not under Clause (c). In other words, the land which was hypothecated by way of security for the takavi loan was, it was argued, treated as collateral security.

5. That was the view which was taken by the trial Court, but the learned Judge held, and we think rightly, that the sale by the Government must have been a sale under Sub-section (1), Clause (c) of Section 7. We find from the statement of the facts in the first Court's judgment that Mt. Lado borrowed a sum of Rs. 1,000 from the Government in order to repair a well which was situated on the mortgaged property. It seems clear, therefore, that the property which was mortgaged to the Government was land for the benefit of which the loan had been granted, and that being so the case clearly falls within Clause (c). There was no case of collateral security as contemplated by Clause (d). The land in this particular case was the principal security, and was in no sense collateral security. It follows, therefore, having regard to the provisions of Section 161 of the Land Revenue Act, that Har Gobind purchased this land free of all incumbrances, including the incumbrance of the plaintiff. The appeal must, therefore, fail and we dismiss it accordingly with costs.