
(1913) 04 CAL CK 0014
In the Calcutta High Court

Umes Chandra Banerjee

APPELLANT

Vs

Dinabandhu Mahanti and Others

RESPONDENT

Date of Decision : 28-04-1913

Acts Referred:

Citation : 29 Ind. Cas. 956

Hon'ble Judges : Beachcroft, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit to enforce a mortgage granted to him and Dina Nath Acharji on the 16th July 1897. The suit was commenced on the 29th July 1909 and was defended by the purchasers of the equity of redemption, who contended that the mortgage-debt had been satisfied by payments made on behalf of the mortgagor to the co-mortgagee of the plaintiff on the 27th July 1899. The question, therefore, arose, whether the payment made by the mortgagor to one of the joint mortgagees was a good payment as against the other mortgagee. The Courts below have answered this question in the affirmative on the authority of the decisions in *Barbar Maran v. Ramana Gounden* 20 M. 461 : 7 M.L.J. 269; *Bhup Singh v. Zain-ul-Abdin* 9 A. 205 : A.W.N. (1886) 279 and *Kari Chengamma v. Jatti Kristnammah* 1 Ind. Cas. 219. On behalf of the plaintiff, this decision has been challenged and reliance has been placed upon the cases of *Harihar Pershad v. Bholi Pershad* 6 C.L.J. 383 at p. 394; *Husainara Begum v. Rahmannessa Begum* 8 Ind. Cas. 837 : 13 C.L.J. 3 : 38 C. 342; *Peary Lal Daw v. Madhoji Jiban* 19 Ind. Cas. 865 : 17 C.L.J. 372; *Sitaram v. Shridhar* 27 B. 292 : 5 Bom. L.R. 91; *Tamman Singh v. Lachhmin Kunwari* 26 A. 318 : A.W.N. (1904) 22 and *Brij Lal Singh v. Bhawani Singh* 7 Ind. Cas. 115 : 32 A. 651 : 7 A.L.J. 821. In our opinion, the alleged payment was not a good payment as against the plaintiff. The principle of law applicable to cases of this description was fully explained in the case of *Husainara Begum v. Kahmannessa Begum* 8 Ind. Cas. 837 : 13 C.L.J. 3 : 38 C. 342 and we see no reason to take a different view. We observe that although the contrary opinion expressed in *Barbar Maran v. Ramana Gounden* 20 M. 461 : 7 M.L.J. 269 was recently adopted

by the majority of the Judges who decided the case of Mannava Annapurnamma v. Uppala Akkayya 19 Ind. Cas. 12 : 24 M.L.J. 333 : 36 M. 544 : 13 M.L.T. 268 : (1913) M.W.N. 328 there was a weighty dissent by White, C.J., which appears to us to enunciate the correct rule on the subject. We are fortified in the view we take also by the terms of the mortgage instrument before us, which states explicitly that the mortgagors would re-pay the loan to the two mortgagees and obtain a return of the mortgage instrument. They were thus under an obligation to tender the money to both the mortgagees, tfhis they did not do. Consequently, the plaintiff is not bound by the alleged payment to his co-mortgagee.

2. The result is that this appeal is allowed, the decree of the Court below set aside and the suit decreed for half the sum claimed. The plaintiff will have his costs throughout the litigation on the amount decreed. The usual mortgage-decree will be drawn up in this Court and six months" time allowed for redemption.