

Rajrangisingh Vs. Sheo Barat

LegalCrystal Citation : legalcrystal.com/477998

Court : Allahabad

Decided On : Nov-22-1923

Reported in : 78Ind.Cas.531

Judge : Kanhaiya Lal, J.

Appellant : Rajrangisingh

Respondent : Sheo Barat

Judgement :

Kanhaiya Lal, J.

1. The dispute in this appeal relates to an occupancy holding which belonged to Bhukal, who died leaving a widow Mt. Lachminia In 1314 F. Mt. Laohminia mortgaged the said holding with possession in favour of the defendant-respondent, Sheo Barat-aYnr, lot Rs. 49 on an agreement to redeem the same in Baisakh 1316 F. she did not, however, pay the mortgage money. In March 1913 Mt. Lachminia died. The plaintiffs and another person named Nath Baksh, who are the co-sharers of the village in which the occupancy holding in question was situated, then sued for the ejection of the mortgagee in the Eevemie Court, alleging that the mortgage was invalid and that the vandnortgagee held the land as a non-occupandy tenant. The trial Court found that the mortgage in question was executed to pay arrears of rent due to the co-sharers by Mt. Lachminia, and that the mortgagee had paid the rent for three years as nasrana to Nath Baksh in order to obtain his consent to the mortgage. It was also found that Nath Baksh attested the mortgage in evidence of his recognition of its validity and that the then plaintiffs were estopped from suing for the ejection of the mortgagee without paying the mortgage-money. On appeal that decision was upheld. In the course of his judgment the learned Commissioner who heard the appeal observed that it was unlikely that the mortgagee would have paid the rent for three years in a lump sum to occupy fields on a tenure that was liable to be terminated at any moment by the death of Mt. Laohminia and that the view taken by the learned Assistant Collector as to the nature of the agreement entered into was reasonable. He further observed that the receipt of rent for three years by the Zemindar carried with it an agreement that the position of the mortgagee should be that of a mortgagee holding on terms, which, although they did not actually confer oooupanoy rights, precluded the Zemindar from ejecting him.

2. In the present suit, which has been filed by some of the then plaintiffs, it is contended that they were not bound by the action of Nath Baksh and that the mortgage was invalid and not binding on them. An attempt is now being made to treat the mortgagee as a trespasser from the time of the death of Mt. Laohminia. The Court of first instanoe found that the plaintiffs could not eject the mortgagee without

paying the money due on the mortgage inasmuch as Nath Baksh had consented to the mortgage and the other co-sharers had allowed the mortgage to remain unchallenged for 78 years even after the death of the mortgagor. It awarded the plaintiff a decree accordingly for possession subject to the payment of Rs. 49 to the mortgagee on account of the money due on the mortgagee. The lower Appellate Court, however, treated the decision of the Revenue Court as precluding the plaintiff altogether from seeking the ejectment of the mortgagee and estopping him from seeking to eject the mortgagee as if he were a mortgagee (sic) or trespasser.

3. The latter view cannot, however, be upheld. The decision of the Revenue Court qua the status of a tenant is binding on the Civil Court; but the effect of the decision of the Revenue Court was not to give the mortgagee a permanent tenure but to recognise his rights as such mortgagee in consequence of the consent which Nath Baksh had accorded to the mortgage by the acceptance of the rent for three years from the mortgagee at the time of the mortgage. Section 20 of the U.P. Tenancy Act (Act III of 1901) declares that the interest of an occupancy tenant is not transferable except by a voluntary transfer between the co-sharers of the tenancy. Section 31 lays down that every transfer made by a tenant in contravention of that Act shall be voidable at the instance of the landholder and the latter can sue for the cancellation of the same and for the ejectment of the tenant and his transferee. The period of limitation provided for such a suit is one year from the date of such transfer. Nath Baksh, one of the co-sharers, is found to have expressly assented to the mortgage by accepting rent from the mortgagee and attesting the mortgagee. He was probably acting on behalf of the entire co-parcenary body, and even if he has not so acting the right of the others co-sharers to challenge the validity of the mortgage expired with the lapse of the period of limitation provided for that purpose. The decision in the Revenue Court did not have the effect of investing the mortgagee with complete immunity from ejectment except for the period the mortgage subsisted. When Musammat Lachminia died without leaving any heirs, the co-sharers became entitled to resume the occupancy holding subject to such rights as had been created by Musammat Lachminia in her life time. They are not entitled to larger rights than those which Mt. Lachminia herself possessed at the time of her death and they can only get back possession on paying the money due on the mortgage, the validity of which they omitted to challenge during the time allowed by law. It is as little open to the co-sharers to treat the mortgagee as a trespasser in the face of the decision which was arrived at in the previous ejectment-proceeding as it is for the mortgagee to set up adverse possession in the face of that mortgage.

4. The appeal is, therefore, allowed and the decree of the lower Appellate Court set aside and that of the Court of first instance restored with costs throughout. The time for the payment of the mortgage-money will be extended till the end of Baisakh mite.