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(1896) 12 AHC CK 0004

Allahabad High Court

Case No: None

Nakchedi Ram		APPELLANT
	Vs	
Ram Charitar Rai and Others		RESPONDENT

Date of Decision: Dec. 18, 1896

Citation: (1897) ILR (All) 191

Hon'ble Judges: Banerji, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Banerji, J.
The plaintiff is a usufructuary mortgagee from the respondents of certain lands in the cultivation of tenants. The plaintiff sued some of the tenants for recovery of rent in a Court of Revenue. The tenants pleaded payment to defendants Nos. 6 and 7, who alleged themselves to be prior mortgagees of the land. They succeeded, and the suit for rent was dismissed. Thereupon the present suit was brought by the plaintiff, against his mortgagors, for possession of the mortgaged land and, in the alternative, for recovery of the mortgage money. The Lower Appellate Court found that the mortgagors had done all they could to put the mortgagee into possession, and had not interfered with his possession, that the persons who alleged themselves to be prior mortgagees had no concern with the property and were not in fact prior mortgagees, and that the plaintiff had no cause of action against his mortgagors. On this ground the Lower Appellate Court has dismissed the claim against the mortgagors. It is contended here that the plaintiff" is entitled to a decree for the mortgage money under Clauses (b) and (c) of Section 68 of Act No. IV of 1882. Clause {b) has no application, as upon the finding of the Court below the mortgagee has not been deprived of the mortgaged property by or in consequence of the wrongful act or default of the mortgagor. Clause (c) also is, in my opinion, of no avail to the plaintiff. The mortgagors did not fail to deliver possession to the plaintiff. It is urged that they failed to secure possession without disturbance by any person other than the

mortgagors. As held by the Madras High Court in Gopalasami v. Arunachella ILR Mad. 304 the words "any other person" in the concluding portion of Clause (c) must be held to mean any other person having a title. If a trespasser disturbs the possession of the mortgagee, that certainly cannot confer any right on him to ask the mortgagor to pay the mortgage money. In this case the tenants of the mortgaged property, who had to pay rent to the mortgagee, wrongfully refused to do so, and, if any one disturbed the possession of the mortgagee, it was the persons who falsely alleged themselves to be prior mortgagees, and not the mortgagors. Surely the mortgagor cannot be held responsible for the acts of others with whom he is not in collusion or who have no title to the property mortgaged by the mortgagor. The suit has in my judgment been properly dismissed. I dismiss this appeal with costs.