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(1912) 11 AHC CK 0023

Allahabad High Court

Case No: None

Baldeo Singh

APPELLANT

Vs

Kalka Prasad

RESPONDENT

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Date of Decision: Nov. 25, 1912

Citation: 18 Ind. Cas. 365

Hon'ble Judges: Tudball, J; Rafique, J

Bench: Division Bench

Final Decision: Dismissed

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### Judgement

#### @JUDGMENTTAG-ORDER

1. This suit was one for sale on the basis of a mortgage. The plaintiff claimed a certain sum as principal with interest up to the date of institution together with pendente lite and future interest and in default of payment asked for sale of the property. The main defence was that the debt had been satisfied. The first Court held in favour of the plaintiffs and passed a decree which is worded as follows:

This suit coming on this 10th of July 1911, it is hereby declared that the amount due to the plaintiffs on account of principal, interest and costs, calculated up to the 9th day of January 1912, is Rs. 1,487-7-6 and it is decreed as follows:

No order is passed as to future interest.

(1) That if the defendant pays into Court the amount so declared due on or before the said 9th day of January 1912, the plaintiff shall deliver up to the defendant, or to such persons as he appoints, all documents in his possession or power relating to the property and shall, if so required, re-transfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him.

(2) That, if such payment is not made on or before the said day of 9th January 1912, the mortgaged property or a sufficient part thereof be sold, and that the proceeds

of the sale &c.

2. From this decree, the defendants appealed and the sole ground of appeal was that it had been fully proved by evidence that the consideration of the bond had been paid off. They valued the appeal at Rs. 1,191-11-6, the amount of the principal, plus, interest up to the date of the institution of the suit as claimed by the plaintiffs and they paid Court-fees accordingly. The lower Appellate Court held in their favour and dismissed the suit on a preliminary point. The plaintiffs have come up here on appeal. The Taxing Officer has reported that the defendants on their memorandum of appeal to the lower Appellate Court ought to have paid Court-fees on Rs. 1,321-7-6, the amount decreed against them by the Court of first instance, which included interest subsequent to the date of institution. The Court-fee payable by the defendants in the lower Appellate Court is an ad valorem fee according to the amount or value of the subject-matter in dispute in appeal. In view of the wording of the decree granted by the Court of first instance it is quite clear that the amount or value of the subject-matter in dispute is Rs. 1321-7-6 (exclusive of costs) which the defendants had been ordered to pay on or before the 9th of January 1912. It may be that the decree is not properly drawn up, but we cannot go behind the decree in deciding this matter. It is quite clear that as the decree stood, it imposed on the defendants liability to pay a sum of Rs. 1,321-7-6 on a fixed date and by the appeal they sought to set aside that liability. An argument has been strongly pressed upon us that in the circumstances of the present case, the subject-matter of the appeal is the same as the subject-matter of the suit, i.e., the value of the plaintiff's claim. In our opinion, the decree being as it is, there is no force in this contention. The value of the subject-matter of appeal before the Court below is as we have stated above. The defendants must make good the deficiency as reported by the Taxing Officer.