

**(1921) 12 AHC CK 0016****Allahabad High Court****Case No:** None

Ram Gopal and Others

APPELLANT

Vs

Abdul Hakim Khan

RESPONDENT

**Date of Decision:** Dec. 9, 1921**Acts Referred:**

- Evidence Act, 1872 - Section 92(1)

**Citation:** (1922) ILR (All) 246**Hon'ble Judges:** Lindsay, J; Gokul Prasad, J**Bench:** Division Bench**Final Decision:** Dismissed

### Judgement

Lindsay and Gokul Prasad, JJ.

After hearing the learned Counsel in this case we think the appeal must, fail and the judgment of the court below must be affirmed.

2. The question now before us is a question of fact and there is a definite finding by the lower appellate court.

3. The plaintiffs brought a suit on a mortgage and asked for sale of certain properties specified in the deed. With regard to one item of property the plaintiffs' plea was that the description of it in the mortgage-deed was wrong.

4. The mortgage deed purports to show that one of the items of the mortgaged property was khewat No. 3 in mahal Jafar Beg. The plaintiffs' case was that this description was a mistake and that what was mortgaged and what was intended to be mortgaged was khata No. 3 in mahal Ismail Beg.

5. It was alleged, and the fact is admitted, that the mortgagor Abdul Hakim Khan, who is the appellant here, has no interest in khata No. 3 in mahal Jafar Beg; on the other hand, it is proved that he had an interest in khata No. 3 in mahal Ismail Beg and that this interest is now, by reason of partition, included in the mahal called

mahal Abdul Hakim.

6. The first court held that there was no proof of mistake. The lower appellate court has held that there was a mistake and it has found in favour of the plaintiff's.

7. It has been argued before us here that this finding of fact arrived at by the learned Additional Judge is not binding inasmuch as the learned Judge referred to evidence which was not admissible. We cannot agree with this contention. The learned Judge of the lower court traced the history of the mortgage in suit up to the first mortgage between the parties made in the month of June, 1892, which showed that in the mortgage of that date the mortgagor had mortgaged" a share in khata No. 3 of mahal Ismail Beg along with other properties. That deed of 1892 was renewed by a later deed executed in 1897. Comparing the two deeds it appeared to the learned Judge of the court below that in copying out the list of items of property mortgaged a mistake was made in the deed of 1897. According to the judgment of the court below the mistake was that after the words "khata or khewat No." the words "mahal Ismail Beg" were left out. It is an admitted fact that the mortgagor owned property in khata No. 4 of mahal Jafar Beg and so it seems to have been assumed that the entry regarding khata No. 3 from which the words had been omitted as we have said above, referred also to mahal Jafar Beg.

8. The bond now in suit was executed in the year 1907 and the finding of the court below is that the mistake which was made in drawing up the deed of 1897 was again repeated in the document of 1907 now in suit. The learned Judge felt no doubt that there had been a clerical error and accordingly he allowed the plaintiffs" claim in respect of the property in mahal Ismail Beg.

9. We cannot allow the argument that the learned Judge of the court below was not entitled to look at the earlier documents of 1892 and 1897. In proviso (1) to Section 92 of the Evidence Act it is laid down that any fact may be proved such as... mistake in fact or law which would entitle any person to any decree or order relating to a document. It cannot, therefore, be doubted that it was open to the plaintiffs to prove this mistake and the evidence which they produced to prove that fact was certainly admissible. The result, therefore, is that we affirm the decree of the court below and order that this appeal be dismissed with costs.