

(1949) 08 AHC CK 0013

Allahabad High Court (Lucknow Bench)

Case No: Civil Revision Application No. 1 of 1945

Shri Thakurji Mahraj Thakur  
Dwara

APPELLANT

Vs

Jangoo Singh and Others

RESPONDENT

**Date of Decision:** Aug. 18, 1949

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115
- Transfer of Property Act, 1882 - Section 76

**Citation:** AIR 1950 All 105

**Hon'ble Judges:** Chandiramani, J

**Bench:** Single Bench

**Advocate:** H.K. Ghosh, for the Appellant; Hyder Hussain, for Opposite Party Nos. 2 to 8, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Chandiramani, J.

This application arises out of the appellate decree of Mr. Ekbal Hussain, Civil Judge, Hardoi, dated 18th September 1944.

2. The opposite parties applied u/s 12, Agriculturists' Relief Act for redemption of a mortgage executed by their predecessor-in-interest in favour of the predecessor-in-interest of the applicant. This mortgage was executed in 1908 for Rs. 1900 and possession was given to the mortgagee in 1909. The opposite parties alleging that the mortgagee in possession had been paid off entirely by the usufruct of the property, sought to redeem it without paying anything. The only question in dispute was the amount of realisation made by the mortgagee while in possession right upto the date of the application. The trial Court came to the conclusion that Rs. 1243-1-0 were due. The mortgagors went up in appeal and urged that in certain

specified years the income actually derived by the mortgagee was Rs. 156 a year and not the amount shown in the mortgagee's account books. This contention prevailed and the learned lower appellate Court found that only Rs. 57-5-0 were due.

3. In this revision it has been urged that the learned lower appellate Court was not right in the method of calculation adopted by it so far as the profits are concerned and that the Court below was also wrong in not allowing him 10 per cent. as costs of collections. I have heard the learned counsel for the parties and I am satisfied that this application must be dismissed.

4. The amount of profits derived by the mortgagee while in possession is a pure question of fact and has been decided by the Court below on the evidence before it. The question therefore sought to be raised in this revision is purely a question of fact which does not involve any question of jurisdiction.

5. So far as the question of costs of collections certainly the mortgagee would be entitled to receive up to 10 per cent. as costs of collections provided he proves that costs were actually incurred in making the collections. There is not a single word on the record about it. If the learned lower appellate Court, therefore, disallowed the costs of collections it did not act unreasonably or contrary to law. There is no force in this revision application and it is hereby dismissed with costs.