

(1932) 01 AHC CK 0020

Allahabad High Court

Case No: None

Munna Lall and Sons

APPELLANT

Vs

Official Receiver

RESPONDENT

Date of Decision: Jan. 12, 1932**Citation:** AIR 1932 All 550 : 137 Ind. Cas. 208**Hon'ble Judges:** Sen, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

Sen, J.

Hathi Ramani, who is a shopkeeper, borrowed certain sums of money from firm Munna Lal and Sons on 3rd November 1928 and made a simple mortgage of the goods of his shop by way of security for the loan. He sued for the money due and gave in evidence and placed reliance upon the fact that he had advanced money on the security of goods in the shop of the defendant. The plaint was not well drafted and the operative portion of the decree could have been more clearly expressed. The intention however of the decree was to give the plaintiff recourse to the goods. The sole question which arises in this appeal is as to whether by reason of the terms of the decree the plaintiff firm can be considered as a secured creditor. The concluding portion of the order of the learned Munsif runs thus:

The plaintiff's claim for Rs. 1,757-12-0 be decreed with costs and usual pendente lite and future interest. Defendant shall pay Rs. 45 at the end of each month till the whole is paid and in case of default of an instalment plaintiff will have a right to recover the whole amount at once. Defendant will have a right to sell goods of his shop already under attachment but in case of misappropriation plaintiff shall have a right to recover his decretal amount at once.

2. There can be no doubt that in the way in which the suit was framed the plaintiff did not ask for a decree that the mortgaged goods be sold but urged at the hearing

that he had a remedy against the goods, and in the course of argument insisted upon his right which the Court accepted as is evident from the terms of the decree given above. Under the terms of the mortgage the interest in the property was held by the mortgagee as security for the loan. The object of allowing this property to remain under attachment was clearly to secure to the plaintiff the benefit of his lien. Under the circumstances we are of opinion that the position of the plaintiff decree holder is that of a secured creditor. We accordingly allow the appeal and set aside the order of the learned District judge dated 13th December 1930 directing that the goods in question be released. We make no order as to costs.