

(1909) 07 AHC CK 0029

Allahabad High Court

Case No: None

Naurang Lal

APPELLANT

Vs

Partap and Another

RESPONDENT

Date of Decision: July 10, 1909

Citation: 3 Ind. Cas. 44

Hon'ble Judges: George Knox, Acting C.J.; Griffin, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal arises out of a suit for redemption of a mortgage executed on the 13th May 1887 by the defendant No. 2 in favour of defendant No. 1. On the 8th March 1892, defendant No. 2 sold the equity of redemption of the greater part of the mortgaged properties to the plaintiff.

2. The defendant No. 1 contested the suit on the ground that the plaintiffs was bound to pay off a further mortgage of (sic) property created by a bond of the 28th January 1893.

3. This bond purported to make a further sum of Rs. 600 chargeable in the mortgaged property and the mortgagor covenanted to pay off this sum along with the original" mortgage money. The Court below has found that of this Rs. 600, only Its. 150 were proved to have been paid to the mortgagor and held that the plaintiffs should pay that amount in addition to the original mortgage money.

4. The defendant, mortgagee appeals and contends that he is entitled to the Rs. 450 disallowed by the Court below. The plaintiffs also file objections u/s 561 of the CPC Act No. XIV of 1882, to the effect that they were not bound to pay the additional sum of Rs. 160.

5. As to the defendant mortgagee"s appeal it is sufficient to say that we have gone through the evidence on the record and have satisfied ourselves that the finding of

the " Court below as to the sum of Rs. 450 is correct.

6. As to the objections filed by the respondent, it appears to us that the ruling of a Division Bench of this Court reported in Bhagwan Das v. Sham Das A.W.N. (1901) 921 is conclusive in respondents" favour, It was then held that a mortgagor who has sold the equity of redemption in property mortgaged by him cannot afterwards charge such property with a further debt so as to render the purchaser of the equity of redemption both to pay such debt before he can redeem.

7. The result is that the appeal is dismissed and the objections are allowed.

8. The decree of the Court below is modified so far that the plaintiffs" claim for redemption is decreed on payment of the mortgage money, Rs. 1,400. Plaintiffs will get their costs throughout from defendant. The decree of the Court below is other wise confirmed.