

(1879) 03 AHC CK 0013

Allahabad High Court

Case No: None

Nikka Mal and Others

APPELLANT

Vs

Sulaiman Sheikh
Gardner

RESPONDENT

Date of Decision: March 18, 1879

Citation: (1880) ILR (All) 196

Hon'ble Judges: Pearson, J; Oldfield, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Pearson, J.

By the terms of the deed of mortgage, dated 28th May 1869, the mortgagor accepted the liability on account of any addition that might be made to the demand of the Government at the time of settlement. The mortgagees, averring that they have had to pay Rs. 1,907-13-3 in excess of the amount of the Government demand entered in the mortgage-deed from 1279 to 1281 Fasli, sue to recover that amount with interest. The lower Courts have disallowed the suit on the ground that the mortgagees are not competent to prefer a claim of this sort in a suit during the currency of the mortgage-tenure. Such a claim, in the opinion of the lower Courts, can only be properly advanced and adjusted when a settlement of accounts between the parties takes place at the termination of the mortgage-tenure. One obvious objection to the opinion of the lower Courts on this subject is that no settlement of accounts is contemplated by or is necessary under the provisions of the deed of mortgage, which allows the mortgagees to appropriate the profits realised by them during the term of mortgage in lieu of interest, and the mortgagor to recover his estate at the end of that term by payment of the principal or the amount of the loan, Another not less obvious objection is the unreasonableness of expecting the mortgagees to make large payment year after year for the mortgagor to be treated as mere supplements to the original loan. But apart from the

objections aforesaid, the view of the lower Courts that a suit of the nature of the present cannot be brought year by year by the mortgagees for the recovery of any sums paid by them in excess of the amount of the Government demand at the time of execution of the deed of mortgage, merely because there is no express provision made for such suit being brought in the deed of mortgage, is quite untenable. The law authorises a man to sue for a debt whenever it becomes due to him. The mortgagees could only have been precluded from so suing, had there been an express provision in the deed reserving the adjustment of such claims to the moment when the mortgage-tenure should be brought to an end. It is admitted that a similar suit has been already once before brought by the mortgagees. It was not then pleaded that the suit was premature and could not be entertained. On the contrary it was entertained and the claim was decreed. The lower Appellate Court has remarked that the deed of mortgage has been carelessly drawn up, inasmuch as the mortgagees are authorised to raise the rents, yet no provision is made for the disposal of the increased profits due to their enhancement; although it can hardly be supposed that it was the intention of the mortgagor that she should pay any increase of revenue to Government, and that the mortgagees should enjoy all the corresponding increase of profits consequent on the enhancement of the rents. We observe, however, that in the present case it is no part of the defence that the increased demand of the Government has been met by a corresponding enhancement of rent. On the contrary the plea is that although empowered to enhance the rent, the mortgagees have neglected to do so. There is nothing in the deed of mortgage binding the mortgagees to enhance the rents in the event of the jama being enhanced. All that is said is that "if the mortgagees wish to enhance the rent of any tenant, they may enhance it, &c." On the other hand the liability undertaken by the mortgagor to pay any additional demand made by the Government is not limited by any condition that such increased demand cannot be met by a corresponding enhancement of rents. In the former suit to which reference has been made it was held that enhancement of rents by the mortgagees would not debar them from recovering enhanced jama; and the ruling was not impugned by appeal. The ground on which the suit has been disallowed by the lower Courts failing, it does not appear that there is any substantial defence to the suit, or that in reference to the foregoing remarks it is necessary to remand the case for the trial of the other issues laid down for trial by the Court of First Instance.

2. We decree the appeal and claim with costs in all the Courts, and interest at 6 per cent, per annum from the date of this decree to the date of realisation.