

(1880) 04 AHC CK 0015

Allahabad High Court

Case No: None

Koteshar Nath

APPELLANT

Vs

Lachmin Narain

RESPONDENT

Date of Decision: April 5, 1880

Citation: (1880) ILR (All) 826

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

Oldfield, J.

The plaintiff held a mortgage of the property in suit under a deed dated 9th July 1875, whereby the obligor stipulated that he would not make any mortgage of the property till the plaintiff's debt was satisfied, and on the 10th October 1878, the property was conveyed to plaintiff under a deed of sale in consideration of the debt secured by the mortgage. The defendant obtained a mortgage of the same property under a deed, dated the 5th September 1875, from the obligor, notwithstanding the stipulation made to plaintiff, and having brought a suit on his bond he obtained a decree on 9th November 1878, this suit being still pending when the sale-deed was executed in favour of plaintiff. The object of the suit now brought by the plaintiff is to have the property declared exempt from liability to be sold in execution of the defendant's decree. The lower Courts have decreed the claim and the decrees are not open to objections.

2. There is no doubt that the defendant's rights cannot be affected by the purchase made by plaintiff, since it was made while the suit brought by the defendant was pending, but, neither will that purchase deprive the plaintiff of any right he may otherwise have against the defendant based on his prior mortgage and the condition in his bond against subsequent mortgages by his obligor. The purchase of the equity of redemption does not necessarily extinguish the original security when, as in this case, it was manifestly the intention of the plaintiff to keep it alive,--Story's

Equity Jurisprudence, 11th ed., vol. ii, Section 1035c.--and there is nothing to prevent plaintiff from contesting the validity of the mortgage made to defendant so far as it affects him, on the ground that it is an infringement of the stipulation in the contract between him and his obligor. The appeal fails and is dismissed with costs.

Spankie, J.

3. I concur with my honourable colleague in his view of the case.