

(1880) 05 AHC CK 0018

Allahabad High Court

Case No: None

Pohkar Singh

APPELLANT

Vs

Chandika Singh and
Another

RESPONDENT

Date of Decision: May 31, 1880

Citation: (1880) ILR (All) 906

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

Bench: Division Bench

Judgement

Straight, J.

This is a suit for possession of a one-pie share of mauza Rai, pargana Ghatanpur, upon the basis of a mortgage dated the 2nd July 1869, and a foreclosure proceeding of the 23rd May 1878. Both the lower Courts decreed the claim and the defendants now appeal. The short facts are that the appellants with one Shankar Singh executed a conditional sale-deed to the plaintiff-respondent on the 2nd July 1869, for a period of four years, of their one and one-half pie share of mauza Rai for an advance of Rs. 125. Some time afterwards Shankar Singh paid Rs. 62 principal and interest to date, as representing one-third of the mortgage amount due, and the mortgagee-respondent accepted it as such and endorsed the receipt on the deed. The appellants failed to pay the balance then remaining and foreclosure proceedings were taken against them alone, Shankar Singh and his half-pie share being exempted. The usual notice was given, and when the required twelve months' grace had elapsed, the proceeding was recorded on the 23rd May 1878, upon which the present suit was instituted. The appellants contend that as the mortgage was joint and the share of Shankar Singh was equally liable with their own for the joint debt, that the foreclosure proceedings were irregular in that he was not made a party, and that the present suit is not maintainable.

2. We are of opinion that this plea must prevail. The mortgage was clearly a joint one, and there is no specification in it that any individual share or portion of a share

is identified to and charged with the repayment of any defined proportion of the money advanced. The liability of the mortgagors was mutual and indivisible in that their property, as a whole, was made responsible for the debt. We therefore do not think it was competent for the mortgagee to treat a sum paid by one of the mortgagors as made on such mortgagor's own account in respect of what might be calculated as his reasonable share of the joint indebtedness and to release his share from further liability. Such payment could only properly be treated as made for the whole of the mortgagors and ought to have been carried to the credit of all of them in reduction of the principal sum jointly due. Consequently the plaintiff-respondent was not justified in exempting the half-pie share of Shankar Singh from the foreclosure proceedings and in directing his claim against the property of the appellants alone. The present suit cannot under the circumstances be entertained. The appeal is decreed with costs.