
(1879) 11 AHC CK 0007

Allahabad High Court

Case No: None

Jag Ram

APPELLANT

Vs

Bhupal

RESPONDENT

Date of Decision: Nov. 17, 1879

Citation: (1880) ILR (All) 449

Hon'ble Judges: Robert Stuart, C.J; Oldfield, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Robert Stuart, C.J.

In this case one Jawahir, in the course of execution of a Small Cause Court decree against him at the suit of the plaintiff, had by a petition in the execution department, dated the 19th December 1871, agreed to pay the debt by yearly instalments, and the petition then proceeds as follows:--"In case of default I shall pay the amount of both the decrees in a lump sum: I shall not alienate my own property and that of my father until the amount of both the decrees has been paid: if I do so, I shall first pay the amount of the Decrees: the first instalment shall fall due in the month of Baisakh, Sambat 1929." It is contended that this has the effect of constituting a valid lien by hypothecation in favour of the plaintiff, and that therefore a subsequent sale to Bhupal, the defendant, was invalid. But such a contention cannot be allowed. The agreement contained in the petition is not evidence of any hypothecation, not even of a verbal one, but simply an arrangement that the property should not be alienated till the debt was paid. In fact, such an agreement goes to disprove that any mortgage or hypothecation was made, or even intended by it, for the very fact of an undertaking "not to alienate" shows that neither the property itself nor any interest in it had actually passed to the plaintiff, which, if there had been a good and valid hypothecation, must have occurred. The sale therefore to the defendant, appellant, cannot be impugned. The present appeal must be allowed, the decrees of both the lower Courts are reversed and the suit

dismissed with costs in all the Courts.

Oldfield, J.

2. It appears that the plaintiff obtained a decree in the Small Cause Court against his judgment-debtor for a sum of money, and in course of execution of it the judgment-debtor entered into an arrangement to pay the amount by instalments, and stipulated that he would not alienate his property until the amount was satisfied. He, however, made an alienation by private sale to the defendant, appellant before us, and the plaintiff has brought this suit to have the property resold, on the ground that it had been hypothecated to him by the arrangement entered into the execution proceedings above referred to. The Courts below have decreed the claim. The appeal on the part of defendant however must prevail, since on examination of the proceedings on which plaintiff relies, it cannot be held that the judgment-debtor made any pledge of any particular property to the plaintiff, for a mere stipulation not to alienate his property generally cannot be taken to effect a mortgage of property as security for a debt. The appeal is decreed and the decrees of the Courts below reversed and the suit dismissed with all costs.