

The Kushtia Loan Office Limited Vs Annada Charan Chakravarty and Others

None

Court: Calcutta High Court

Date of Decision: Nov. 23, 1922

Citation: 77 Ind. Cas. 26

Hon'ble Judges: Walmsley, J; B.B. Ghose, J

Bench: Division Bench

Judgement

B.B. Ghose, J.

The plaintiffs are the appellants in this case. The suit was brought for enforcing a mortgage executed by the s defendants

Nos. 1, 2 and 3 in favour of the plaintiff Company, in July 1913. Twenty-four items of property were mortgaged. Out of these, two items were

acquired under the Land Acquisition Act in 1915 and the amount of compensation awarded was less than the mortgaged money. The plaintiffs

were entitled as mortgagees to take the whole amount of compensation in satisfaction of their mortgage. But the mortgagors were not willing that

the entire amount should be taken by the mortgagees in payment of that debt. The plaintiff Company had two unsecured debts due from the

mortgagors. What the mortgagors wanted was that the compensation money should be appropriated in full payment of the unsecured debts and a

portion of it should be taken by the mortgagees towards part satisfaction of the mortgage-debt. The mortgagees agreed to that and the unsecured

debts were paid off with a portion of the compensation money. In 1916, the co-defendants Nos. 4, 5, 6, 7 and 10 with some other

defendants purchased the equity of redemption in some of the mortgaged properties subject to the mortgage and they have been impleaded in this

suit as such purchasers. Their objection was that the mortgagees were bound to give credit for the entire amount of the compensation money in

reduction of the mortgage debt. The Court of first instance made a decree in favour of the plaintiffs for the full amount of the mortgage-money

due on appeal by the contesting defendants, the power Appellate Court has varied that decree and directed that Rs.2 money due on the

mortgage should be reduced by allowing credit for the amount that was paid in satisfaction of the unsecured debts due to the mortgagees. This

view in my opinion is erroneous portion of the property had been acquired under the Land Acquisition Act before the contesting defendants had

acquired any interest in the property. Reliance has been placed by the learned Vakil for the respondents on the principle that where the

mortgagee receives any money by means or virtue of a security, it must be applied in reduction of the mortgage-debt. But that principle has no

application here. Before any third person had acquired any interest in any portion of the mortgaged property, the mortgagees were entitled, if they

so desired, to pay the whole amount of the compensation money to the mortgagors. They would thereby have reduced their own security and the

interest of no other person would have been affected in any way. What happened in this case practically amounts to this that the mortgagees made

over a part of the compensation money to the mortgagors and the mortgagors paid it back to the mortgagees in satisfaction of their unsecured debt

As this happened before the contesting defendants had acquired any interest in the mortgaged property, they have no right to complain. The

mortgagors themselves could not have after entering into the arrangement referred to above claimed that the mortgagees were bound to give credit

for the amount in satisfaction of the mortgagees debt which they had themselves asked the mortgagees to appropriate in satisfaction of some other

debt. The appeal must, therefore, be allowed the judgment and decree of the lower Appellate Court set aside and those of the First Court restored

with costs in all Courts. As the period of redemption fixed by the Court of first instance has expired, that period will be extended by three months

from this date.

Walmsley, J.

2. I agree.