

PRIVY COUNCIL

M. Aditya Prasad

Vs.

Ram Ratan Lal

P.C.A No. 30 of 1929

(Lord Atkin, J. Sir George Lowndes and Sir Binod Mitter. JJ.)

13.02.1930

JUDGMENT

LORD ATKIN J.

1. This is an appeal from the Chief Court of Oudh in a redemption suit brought by the appellant against the respondents. The Chief Court had reversed the decision of the Subordinate Judge of Gonda, and the question turns upon whether the plaintiff is obliged in order to get redemption to redeem a debt which was created by him by a document in writing of 10th November 1881. It appears that the predecessor-in-title of the plaintiff was the zamindar of the village of Parsapur, and that on 11th July 1881 he executed a usufructuary mortgage of the village to the respondents for Rs. 5,500, and the terms of the mortgage were that the mortgagor was to have no power of redemption for a period of 15 years; after that he was to pay off the entire mortgage money. The respondents entered into possession, in the ordinary course, of the village.

2. On 10th November 1881, the zamindar executed a further document and the question is whether or not this document created a charge upon the village. It is unnecessary to set it out at length but it recites that he had executed a possessory mortgage deed in respect of the whole village and that needed a further sum of Rs. 2,500 which he had borrowed and he then stipulated to repay the entire amount of the debt principal and interest in a lump sum within the period stipulated in the former mortgage deed namely, within 15 years and he recited that he had borrowed the money by way, according to the correct translation, of a further debt with interest at the rate of Rs. 1-8-0 per cent per month. The deed then provided:

" I shall first pay up this debt including principal and interest and thereafter I

can redeem the mortgaged village having paid up the mortgage money. Without the payment of this debt I cannot redeem the mortgaged village. "

3. It then provides that he should pay every year the interest on the amount and if he did not, then he would execute separate bonds each year bearing interest at the same rate and then it further stated which is rather by way of repetition that he could not pay up the prior mortgage money until he had paid off this debt principal and interest.

4. Now, the question is whether that was intended by the parties to give a charge upon the property to the mortgagees for the amount of that debt. The Transfer of Property Act does not apply as this transaction took place in 1881 and the Transfer of Property Act was passed in 1882 but the principles that prevail in those circumstances are the principles of justice, equity and good conscience and for this purpose their Lordships think may be taken to be identical with the provisions in the Transfer of Property Act. The only question the Court had to determine was whether or not the parties intended that this debt should be charged upon the property.

5. The Chief Court reversing the decision of the Subordinate Judge have held clearly that was the intention. Their Lordships agree with that decision. It appears to them clear when the subsequent deed is looked at that the parties intended that the original village should remain in the possession of the mortgagees until the second debt was paid off and intended, therefore, that the property should be security for the debt. In these circumstances it appears to their Lordships that the Court below could only come to one conclusion and that their decision is amply supported by the case of *Janardan Vishnu Kulkarni v. Anant Lakshmanshet* a decision of Sir Lawrence Jenkins, where the facts were almost identical with the facts in this case.

6. Their Lordships, therefore, will humbly advise His Majesty that this appeal should be dismissed and that the appellant should pay the costs. The case, however, must be referred back to the Chief Court to extend the time beyond the 31st July 1928 fixed by their decree within which the appellant can redeem and also to take any further accounts of principal, interest and costs.

Appeal dismissed.

Cases Referred.

[1908] 32 Bom. 385=10 Bom. LR 575.