

PRIVY COUNCIL

Ganeshi Lal

Vs.

Thakur Charan Singh

Privy Council Appeal No. 28 of 1929
(Lord Tomlin, J. Sir George Lowndes and Sir Binod Mitter. JJ.)

13.03.1930

JUDGMENT

LORD TOMLIN J.

1. This is an appeal from a judgment of the High Court of Judicature of Allahabad which reversed a judgment and decree of the Subordinate Judge of Aligarh.
2. In the suit the respondents, before their Lordships' Board, being the representatives of the purchaser of one property (which may be called K) sued for contribution from the appellants, the purchasers of a second property (which may be called M), on the ground that the purchaser of K had paid off a mortgage which covered both properties.
3. Now the section of the Transfer of Property Act which deals with the right of contribution is Section 82, and it is in these terms:

"Where several properties, whether of one or of several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage after deducting from the value of each property the amount of any other encumbrance to which it is subject at the date of the mortgage."

4. that is the statutory provision by which contribution as between owners of equities of redemption subject to a common mortgage is regulated. The facts of this case are as follows : On 8th November 1906, the original owner of both properties created a mortgage for 8,000 rupees in favour of one Mangal. On 19th May 1914, he purported to sell property K to Sher Singh the ancestor of the respondents for 33,000 rupees and a sum of 32,000 rupees out of the purchase price was left with Sher Singh to enable him to discharge the mortgage of 8th November 1906, and other debts of the vendor,

including certain debts for which creditors had already obtained decrees and had attached the properties. In July 1914, the other property M was sold to the first appellant on behalf of himself and the second appellant in execution of a decree obtained by Kishen Singh, a creditor of the mortgagor before 19th May 1914. It was sold for 2,900 rupees subject to Mangal's mortgage. That sale constituted the title of the appellants to property M. Then on 14th November 1914, property K was sold under a decree obtained by another creditor of the mortgagor before 19th May 1914. This sale was also subject to Mangal's mortgage and was for 1950 rupees. The purchaser later on 16th April 1915, conveyed property K to Sher Singh. These sales of course overrode the sale of both properties to Sher Singh purported to have been made on 19th May 1914. Sher Singh having failed to pay off Mangal's mortgage and the other debts of the mortgagor out of the money left with him for that purpose, Mangal's mortgage continued in force against both properties.

5. In 1918 Mangal took proceedings to enforce his mortgage by the sale of both properties and he obtained judgment and a decree for sale. On 20th August 1921 both properties were put up for sale and were sold but before the sale was confirmed namely on 19th September 1921, Sher Singh the purchaser under the contract of 19th May 1914, and the assign of the purchaser of property K under the sale of 14th November 1914, intervened and deposited the amount required to satisfy the mortgagee's claim and thus obtained a setting aside of the sale of 20th August 1921. The position, therefore, was this that subject to Mangal's mortgage, Sher Singh held property K under the title made by the execution sale of 14th November 1914, and that subject to the same mortgage the appellants held property M under the title made by the execution sale of July 1914. Sher Singh had not carried out his obligation to the mortgagor under the sale deed of 19th May 1914, in respect of the money left with him, but in 1921 he provided all the money then necessary to pay off Mangal's mortgage which necessarily was a greater sum than would have been required if the mortgage had been paid off in 1914. Sher Singh died and his representatives, the present respondents launched the suit to compel from the appellants as owners of property M contribution towards the amount which Sher Singh had applied in paying off Mangal's mortgage. The appellants' answer was this :

"Your ancestor had the money, or at any rate a substantial portion of it, Rs. 17,000 from the original mortgagor, and he ought to have applied that money in paying off the mortgagee in 1914, and so far as it became necessary in 1921 to pay more than the Rs. 17,000 that was due to your ancestor's negligence and,

therefore, we are not liable to contribute, because he had a contract with the mortgagor to apply the money."

6. The Subordinate Judge took the view founding himself apparently on the case of *Muhammad Abbas v. Muhammad Hamid* that there was an equitable principle which precluded the respondents from insisting on the right of contribution conferred by Section 82. The High Court, on the other hand, took a different view, and held that the appellants were not parties to the contract between Sher Singh and the mortgagor for the application of the money, and that the benefit of the contract had not in any way passed to them, and that in these circumstances the provisions of Section 82 applied and that the appellants were bound to make contribution.

7. Their Lordships are of opinion that the conclusion at which the High Court arrived is correct. It would indeed be somewhat surprising if the result were otherwise. The appellants bought subject to the mortgage and paid a price for the property on that footing, and their contention really amounts to this, that having paid for the property on the basis of its being subject to the mortgage they ought now to be allowed to have the benefit of it free from the mortgage and that without making any payment towards the attainment of that satisfactory result.

8. It seems to their Lordships that Section 82 is the section that governs the case and that as the Act prescribes the conditions in which contribution is payable it is not proper to introduce into the matter any extrinsic principle to modify the statutory provisions. The decision in the case to which the Subordinate Judge referred may be justified on the footing that in that case there passed to the party from whom the contribution was sought the benefit of the contract by which the money was to be applied, so that he could say :

"I have a contract which frees me from the liability to contribution which the section would otherwise impose on me."

9. No such plea is available to the appellants in this case. They were not parties to the contract of 9th May 1914, nor has the benefit of that contract passed to them in law or in equity.

10. Their Lordships are of opinion this appeal fails, and they will humbly advise His Majesty accordingly.

11. The appellants will pay the costs of the respondents in the appeal.

Appeal dismissed.

Cases Referred.

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

[1912] 9 A LJ 499=44 IC 179,