

ALLAHABAD HIGH COURT

Chheda Lal

Vs.

Ghulam Abbas

(Mukerji, J.)

17.01.1929

JUDGMENT

Mukerji, J.

1. The only question urged before me is that the lower Courts were wrong in holding that the defendant acknowledged the subsistence of the mortgage and their liability to be redeemed within the meaning of Section 19, Lim. Act. It appears that the mortgage sought to be redeemed was made on 30th January 1864. A suit for redemption was brought by certain persons against the present appellants in 1904. The written statement filed by the defendant-appellants has been put in the record of this case and it was on foot of that written statement that the learned Judges in the Court below held that there was a good acknowledgment on the part of the defendants. To satisfy myself in the matter, I sent for the record of the previous litigation and now the plaint and the written statement are both before me. The plaintiffs of the suit of 1904 stated in para. 2 of the plaint as follows:

The land aforesaid (described in para. 1 of the plaint) is in possessory mortgage with the defendants Nos. 1 to 3 under a deed executed by... in favor of...: and dated...

2. This statement was admitted by the present appellants by para. 2 of the written statement. I have gone through the entire written statement and I have found nothing therein, from which I could infer that it was ever the intention of the defendants to deny the mortgage. That being the case, there can possibly be no reason to suggest that the admission of correctness contained in the written statement of the statement made in the plaint in para. 2 was not a clear admission of what was stated in the plaint, viz., the defendants were in possession as mortgagees.

3. It was contended on behalf of the appellants that an acknowledgment to be good must be a conscious acknowledgment of the fact that the defendants were liable to be redeemed. A case decided by myself, viz., *Sham Devi v. Bhagwat Dayal*¹, has been cited before me. I accept as good law what I stated in that case viz:

An acknowledgment to be good should be a conscious acknowledgment of liability. It should signify to the mind of the person making the statement that the

¹ AIR 1925 All 353 : 85 Ind. Cas. 584

maker of the statement thinks and believes that he is liable to be redeemed at the date of the making of the statement.

4. I agree with the Courts below that such an acknowledgment exists in this case. The result is that the appeal fails and it is hereby dismissed with costs.

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