

Gulab Singh vs L. Hira Lal on 24 September, 1953

Equivalent citations: AIR1954ALL314, AIR 1954 ALLAHABAD 314

JUDGMENT

Randhir Singh, J.

1. This appeal raises a short point. Gulab Singh 'alias' Sua Singh appellant made a mortgage of certain plots in favour of the plaintiff Hira Lal on the 5th January, 1951, and made over possession to the mortgagee Hira Lal. Hira Lal then made an application for fixation of ex-proprietary rent of these plots as Gulab Singh had his 'Khudkast' or 'Sir' in the plots. An objection was raised by the other brothers of Gulab Singh that Gulab Singh was the owner of only one-fourth share in the plots and had no right to make a mortgage of all the plots. This objection did not find favour with the Revenue Court and the three brothers of Gulab Singh then instituted a suit in the Court of the Munsif for a declaration that the mortgage made by Gulab Singh was not binding on the three-fourths share in the plots and the plaintiff was not entitled to possession of the shares owned by the three brothers. This suit was decreed.

The plaintiff then instituted the suit which has given rise to this appeal for the recovery of the mortgage money on the allegations that the security furnished by the mortgagor had been rendered insufficient and he was entitled under Section 68 of the Transfer of the Property Act for a refund of the money advanced to the mortgagor. The munsif decreed the suit. The defendant then went in appeal to the District Judge. The Civil Judge who heard the appeal upheld the Judgment of the Munsif and the defendant has now come up in second appeal.

2. The respondent has not turned up and the appeal has been heard 'ex parte'.

3. The only point which has been raised on behalf of the appellant in this case is that the mortgage made by Gulab Singh was void and as such the plaintiff was not entitled to a refund of the money advanced by him. In support of this contention a ruling reported in -- 'Ode Ram v. Chhida Singh', AIR 1944 All. 276 (A) has been cited. In this reported case the property mortgaged was ex-proprietary holding and it was held that a mortgage of ex-proprietary holding was void. Some other rulings have also been referred to in this reported case and all those cases relate to mortgages of occupancy holdings.

A mortgage or sale of occupancy holdings is void, but a mortgage or sale of a share in plots of which the transferor is the owner will not be void. If the transferor transfers a share in excess of his own share, the transaction would be valid so far as his share is concerned and would be invalid with regard to the share of the other co-sharers. In the present case Gulab Singh had a right to mortgage his share in the plots and as such the transfer could not be said to be void. The ruling has, therefore, no application to the facts of the present case. Gulab Singh's mortgage was valid in respect of his

one-fourth share in the plots.

4. Section 68 of the Transfer of Property Act lays down that a mortgagee has a right to sue for the mortgage money where, by any cause other than a wrongful act or default of the mortgagor or mortgagee the security is rendered insufficient within the meaning of Section 66 of the Transfer of Property Act. The claim of the brothers of Gulab Singh in respect of three-fourths share in the property having been decreed, the property which was furnished as security for the loan had evidently been rendered insufficient and the plaintiff was, therefore, entitled to sue for his mortgage money under Section 68 of the Transfer of Property Act. The view taken by the Courts below appears to be correct. No other point has been pressed in arguments.

5. As a result the appeal fails and is dismissed. As the respondent is absent I make no order as to costs.