

Sm. Kawal Patti And Anr. vs Ram Jokhan Upadhya on 25 September, 1955

Equivalent citations: AIR1956ALL150

JUDGMENT

Roy, J.

1. This is a plaintiffs' second appeal. The facts giving rise to it may be briefly stated as follows:

2. On 4-5-1950, the plaintiffs executed a pronote in the sum of Rs. 500/- in favour of Ram Jokhan Upadhya the defendant. The pronote carried interest at six per cent. per annum and the money was payable on demand. Subsequent to the execution of that pronote the creditor was put in possession of two plots of land having a total area of 0.71 acres. The land was the 'khudkasht' of the debtors.

The creditor filed a suit No. 207 of 1953 in the Court of Small Causes, Gorakhpur, for recovery of the sum of Rs. 500/- together with Rs. 50/-, as interest on the pronote. In defence the debtors contended that they had borrowed only Rs. 100/- and had given their thumb-impression on a blank form of pronote, and that the amount had been inflated.

3. The debtors filed another suit No. 1052 of 1953 in the Court of the Munsif of Gorakhpur against the creditor in which they alleged that they had borrowed this amount of Rs. 100/- about seven or eight years back and in lieu of that amount they had given two plots specified above; that the debt was paid up by the usufruct of the property; and that they should be put in possession of the land.

4. The two suits were tried together by the learned Munsif of Gorakhpur. He decreed the claim of the creditor and dismissed the claim of the debtors. The debtors went in appeal in both the suits. The appeals were heard by the Civil Judge of Gorakhpur who dismissed the same on 28-3-1955.

5. The present appeal by the debtors is out of the suit which had been instituted by them for recovery of possession of the land. Mr. Janardan Swarup Gupta, appearing on behalf of the appellants, has stated that from the decision of the other suit he has filed a revision in this Court which is still pending at the stage of admission.

6. The only point which has been raised by learned counsel for the appellants is that having regard to Section 14, U.P. Zamindari Abolition and Land Reforms Act, 1950, the suit for possession of the land could not have been dismissed. Sub-section (1) of Section 14, U.P. Zamindari Abolition and Land Reforms Act says that subject to the provisions of Sub-section (2), a mortgagee in possession of an estate or share therein shall, with effect from the date of vesting, cease to have any right to hold or possess as such any land in such estate.

Sub-section (2) of that section, 'inter alia', provides that where any such land was in the personal cultivation of the mortgagee on the date immediately preceding the date of vesting, if 'it was 'sir' or 'khudkasht' of the mortgagor on the date of the mortgage, the same shall, for purposes of Section 18, be deemed to be the 'sir' or 'khudkasht' of the mortgagor or his legal representative.

Section 14 of the Act does not, to my mind, cover the present case. Here there was no mortgage. A mortgage in the sum of, Rs. 500/-, or even in the sum of Rs. 100/-, could only have been made, in view of the provisions of Section 59, Transfer of Property Act by a registered instrument signed by the mortgagor and attested by at least two witnesses. It is only where the principal money secured is less than one hundred rupees that a mortgage may be effected either by a registered instrument signed or attested as aforesaid, or, except in the case of a simple mortgage, by delivery of the property.

Now in the present case the alleged mortgage was not simultaneous with the taking of the loan. The loan was taken on foot of a pronote. If towards payment of interest of that pronote, or for the payment of the principal debt, the creditor is put into possession of certain property not by way of mortgage but under an oral, contract between the parties, the contract being that he may continue in possession of the land till the debt is liquidated, it will not amount to a "mortgage" within the meaning of that term under the Transfer of Property Act, and the person in possession will not be a "mortgagee" as defined in that Act; so that Section 14, U.P., Zamindari Abolition and Land Reforms Act will not come into play to cover such a transaction.

Consequently the creditor cannot be said to be a "mortgagee in possession of an estate", and his "right to possess will not cease" under Section 14, U.P. Zamindari Abolition and Land Reform Act "with effect, from the date of vesting". This sec and appeal has, therefore, no force and it is dismissed under Order 41, Rule 11, Civil P. C.