

Allah Singh vs Tara Singh And Anr. on 19 January, 1955

Equivalent citations: AIR1955ALL706, AIR 1955 ALLAHABAD 706

ORDER

Kidwai, J.

1. This is a Small Cause Court case in which the plaintiff sued on the basis of a loan which was secured by an usufructuary mortgage. The mortgage provided for realisation of the money from the person of the mortgagor if there was a defect in title. It is not even alleged that there was any defect in the title of the mortgagor. Since this was an usufructuary mortgage, no suit could be brought on the basis of it apart from the question of personal liability unless it was shown that the property was destroyed by any cause other than the default of the mortgagor or the mortgagee.

In the present case the property was in the Punjab and the mortgagor and the mortgagee both abandoned it and came away to India. The partition of India did not legally have the effect of destroying the rights of Hindu owners of property in Pakistan or of Muslim in India. The plaintiff is not in possession of the property merely because he chose to abandon it and came away to India. It was no doubt due to the fact that he apprehended danger to his person that he came away to India. That will not, however, affect the position. It was in fact owing to his act that the property was abandoned. The decision of the lower courts must, therefore, be upheld and this application fails and is dismissed with costs.