

Allahabad High Court

Ramadhar Rai And Ors. vs Dudh Nath Rai And Ors. on 20 January, 1948

Equivalent citations: AIR 1948 All 308

Author: Sapru

ORDER Sapru, J.

1. This is a defendants' application in revision arising out of a suit brought by the plaintiffs opposite party under Section 12, U.P. Agriculturists' Relief Act, for redemption of a certain mortgage. The defence to the suit was that the defendants were not mortgagees at the time of the suit but were, in point of fact, occupancy tenants of the mortgaged plots. The trial Court dismissed the suit on a finding that the defendants were tenants of the mortgaged plots and that they were not mortgagees. Thereupon there was an appeal by the plaintiffs to the lower appellate Court. That Court has set aside the finding of the learned Assistant Collector and has held that the defendants are mortgagees and not tenants. It has further remanded the case for disposal of the issue whether the amount had been paid or not. It is against this order of remand that the present application in revision has been filed by the defendants.

2. Admittedly no appeal against the order passed lies to this Court. The plaintiffs opposite party have, however, raised an objection that no revision also lies. It strikes me that in remanding the case the lower appellate Court did not exercise a jurisdiction that was not vested in it by law. It has, however, been pressed before me that the finding of the learned Civil Judge that the defendants are mortgagees of the plots in suit is wrong in law as admittedly the mortgage was of occupancy plots and a mortgage of occupancy plots is prohibited by law. It is argued that the language of Section 12, U.P. Agriculturists' Relief Act, presupposes a valid and redeemable mortgage and that if the mortgage is void ab initio, then no jurisdiction is conferred under Section 12, U.P. Agriculturists' Relief Act. Section 12, U.P. Agriculturists' Relief Act, provides a special remedy which is applicable only where the mortgage is not void ab initio. Inasmuch as the mortgage in this case was void ab initio, it is urged that the learned Judge was wrong in remanding the case to the trial Court. It may be pointed out that it was held in the Full Bench case in Ghasu v. Babu Ram 31 A.I.R. 1944 All. 25, that though a usufructuary mortgage of an (occupancy holding is void, yet if the mortgagee has been put in part in possession of the occupancy holding, the mortgagor cannot recover back possession of the holding without returning the consideration which he had received and that it will not be straining the statute unduly if actions under Section 12, U.P. Agriculturists' Relief Act, are permitted in relation to occupancy holdings also and to apply Section 12 to transactions which are not strictly legal mortgages but which are analogous to mortgages and in substance partake of their nature. This Full Bench ruling is binding upon me. The position, as I see it, is that there is therefore no force in the plea that the learned District Judge exercised his jurisdiction to remand the case wrongly because there was no valid mortgage. This revision, therefore, must fail.

3. I accordingly dismiss it with costs. Let the record of the case be sent back without any further delay.