

Allahabad High Court

Sukh Lal vs Kanjman And Ors. on 25 November, 1929

Equivalent citations: AIR 1930 All 98

## JUDGMENT

1. This is a second appeal by a plaintiff Sukhlal whose suit for enforcement of a simple mortgage bond has been dismissed by the lower appellate Court. The facts are that on 22nd December 1909 Patti Ram, the father of defendants 1 to 3 executed a simple mortgage bond for Rs. 400 in favour of Sukhlal and his brother Chedalal mortgagees. Sukhlal alone brought the suit and joined his brother Chedalal as defendant 4. The contesting defendants 1 to 3 pleaded that on 21st March 1917 their father Pattiram discharged the whole mortgage debt on the bond of 1909 by executing a new bond in favour of Chedalal alone for Rs. 900 out of which Rs. 500 went to satisfy the mortgage debt of 1909 and Rs. 400 was a new loan from Chedalal to Pattiram. It was also pleaded that in the original mortgage of 1909 Sukhlal's name was merely farzi and Sukhlal had not advanced any of the mortgage consideration. It has been found as a fact by the lower appellate Court that the finding of the Munsif was correct, that the defendant failed to prove that Sukhlal did not advance any of the consideration of the mortgage bond of 1909.

2. It has not been alleged in this case that Sukhlal and Chedalal were joint The lower appellate Court held that both the brothers Sukhlal and Chedalal were entitled to act and receive payments individually without reference to the other, and that the mortgage bond of 1917, though executed in favour of Chedalal alone, discharged the bond in suit. Sukhlal plaintiff has appealed. In *Ramchandra v. Goswami Rajjan Lal* [1910] 32 All. 164 it was held that where two mortgagees had advanced money equally one of them could not give a discharge for the entire mortgage debt without the consent of the other or reference to him. Similarly in *Manzur Ali v. Mahmudunnissa* [1903] 25 All. 155 it was held that where there is no specification in the mortgage-deed in regard to who advanced the money the presumption is that the money was advanced in equal shares. We consider therefore, that; under the circumstances of the present case the payment in 1917 to Chedalal alone without reference to Sukhlal would not have been a sufficient discharge of the mortgage debt due to Sukhlal. It is still more the case when the debt is discharged not by payment of money but by the execution of a new mortgage bond. Even in the Madras High Court where a contrary view in regard to payment is taken, it was held in *Ramasami v. Chandra Kottayya* A.I.R. 1925 Mad. 231 that where the payment was made by a new bond to one of several obligees, it did not discharge the obligation to the other obligees.

3. The plea that Chedalal had authority to receive discharge of the mortgage debt for Sukhlal was not pleaded in the written statement and issue 3 on which a finding to this effect has been made is an issue which was framed on a different pleading, namely whether the rightful person to whom payment should be made was Sukhlal or Chedalal. This plea, therefore, cannot be put forward in this case.

4. Accordingly we allow this appeal and restore the decree of the Court of first instance in favour of the plaintiff. The costs in the decree under O. 34, Rule 4, will be the costs in all Courts.