

ORIGINAL CIVIL.

Before Panckridge J.

PROMATHA NATH RAY

v.

KANAKENDRA NATH TAGORE.*

1938

June 3.

Mortgage—Deposit of title deeds of mofussil properties—Mortgage of Calcutta properties as additional security—Jurisdiction.

On April 14, 1931, the mortgagors deposited the title deeds of certain mofussil properties with the plaintiff to secure repayment of Rs. 1,35,000 with interest. On July 16, 1934, the plaintiff advanced a further sum of Rs. 35,000, to secure repayment of which the mortgagors, by a deed, conveyed unto the mortgagee certain Calcutta properties to have and to hold unto and to the use of the mortgagee subject to the proviso for redemption thereafter contained and also further charged all the mofussil properties covered by the title deeds deposited in April, 1931. The deed further provided that "in consideration of the premises and as additional security for payment of all monies owing and payable by the mortgagors unto the mortgagee under the memorandum of agreement of deposit of title deeds dated April 14, 1931, the mortgagors do charge and assure unto the mortgagee all the Calcutta properties."

Held that the effect of the deed of July 16, 1934, was to alter the character of the transaction of April 14, 1931, by changing it from a hypothecation of mofussil properties only into a hypothecation of mofussil properties and Calcutta properties and therefore the High Court had jurisdiction to entertain a suit on the mortgages.

Krishna Kishore De v. Amarnath Kshetry (1) distinguished.

ORIGINAL SUIT.

The facts of the case and arguments of counsel appear sufficiently from the judgment.

B. N. Ghose for the plaintiff.

Arun Sen for the substituted defendants.

PANCKRIDGE J. In this suit certain substituted defendants have filed a written statement in which they raise a question of jurisdiction.

*Original Suit No. 1332 of 1937.

(1) (1920) I. L. R. 47 Cal. 770.

Mr. Ghose for the plaintiff has not insisted on certain technical objections although they appear to me to be of some substance. I accordingly propose to deal with the submission of these defendants without deciding whether in the present state of the pleadings the defendants are entitled to raise them.

The material facts are that, on April 14, 1931, the mortgagors deposited the title deeds of certain mofussil properties with the plaintiff to secure repayment of Rs. 1,35,000 with interest.

Mr. Ghose admits, as indeed he is bound to do, that the only Court which would have jurisdiction to entertain a suit on this equitable mortgage is the mofussil Court, within the local limits of whose jurisdiction the properties are situated.

On July 16, 1934, however, the plaintiff advanced a further sum of Rs. 35,000. The terms of this advance are contained in a mortgage deed of that date.

The deed recites that the mortgagors having occasion to borrow the sum of Rs. 35,000 have applied to the mortgagee to lend and advance that sum on having the repayment thereof with interest secured by mortgage of the lands, hereditaments, messuages and premises set out in part II of the schedule (such lands being Calcutta properties), and also by a further charge of the *zemindâris* and estates, messuages, *tâluks*, lands, hereditaments, and premises set out in part I of the schedule. The properties set out in part I are the mofussil properties covered by the title deeds deposited in April, 1931. The recitals continue:—

Whereas it has been agreed between the mortgagors and the mortgagee that the mortgagors should also furnish additional security for the payment of the monies payable on the said memorandum of agreement and deposit of title deeds, dated April 14, 1931, by executing a further charge of the lands, hereditaments, messuages and premises set out in part II of the schedule herein.

Then comes the operative part of the deed by which the mortgagors grant and convey unto the mortgagee the Calcutta properties to have and to

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hold unto and to the use of the mortgagee for ever subject to the proviso for redemption thereafter contained.

The deed further states that the mortgagors do each of them charge and assure unto the mortgagee all the mofussil properties to secure payment by the mortgagors unto the mortgagee of the aforesaid sum of Rs. 35,000.

The next provision in the deed is that in consideration of the premises and as additional security for payment of all monies owing and payable by the mortgagors unto the mortgagee under the memorandum of agreement of deposit of title deeds dated April 14, 1931, the mortgagors do charge and assure unto the mortgagee all the Calcutta properties.

Mr. Sen for the defendants admits that he cannot resist a mortgage decree for the sale of the Calcutta properties to satisfy both the debt covered by the deposit of title deeds and the fresh advance of Rs. 35,000 and for the sale of the mofussil properties to satisfy the debt of Rs. 35,000.

He maintains, however, that the plaintiff is not entitled in this suit to have the mofussil properties sold in satisfaction of the debt of Rs. 1,35,000 secured by the deposit of title deeds of April 14, 1931.

His submission really amounts to this that the plaintiff has two causes of action, one under the memorandum of agreement of deposit and the other under the deed of July 16, 1934. He submits—and in this I agree with him—that if different causes of action are to be joined in the same suit the Court must be satisfied that it has jurisdiction in respect of each of them, and he says that admittedly this Court would have had no jurisdiction to enforce the equitable mortgage of the mofussil properties, if the deed of July 16, 1934, had never come into existence. He submits that this deed has really no bearing on the situation because it creates a separate cause of action.

I think there is considerable force in his contention, but on the whole I prefer the view for which

Mr. Ghose has argued that the effect of the deed of July 16, 1934, is to augment the security available in respect of the loan secured by the memorandum of deposit.

I have been referred to *Krishna Kishore De v. Amarnath Kshetry* (1). There one of the defendants who was the mortgagee of mofussil properties by virtue of a mortgage created by another defendant had sub-mortgaged to the plaintiffs and by the same deed had also mortgaged Calcutta properties. The Court held that the plaintiffs could not enforce their right under the sub-mortgage in a suit instituted in Calcutta and pointed out that it would be a hardship if the original mortgagor were sued in a Court other than that in whose jurisdiction the properties were situated, merely because his mortgagee had mortgaged the mortgagee's interest in those properties to the plaintiffs.

Such considerations do not arise here, and although the question is by no means free from difficulty, I consider that the effect of the second document is, among other things, to alter the character of the transaction of April 14, 1931, by changing it from a hypothecation of mofussil properties only into a hypothecation of mofussil properties and Calcutta properties.

Accordingly this is not a case where a cause of action over which the Court has no jurisdiction has been erroneously joined with a cause of action over which the Court has jurisdiction.

In these circumstances I consider that the submissions made by Mr. Sen's client must fail, and the plaintiff will therefore formally prove his case.

Attorneys for plaintiff : *B. N. Basu & Co.*

Attorneys for defendants : *R. M. Chatterjee & Co.*

(1) (1920) I. L. R. 47 Cal. 770.