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December 23,

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir
George Knox.

RAM CHANDRA AND ANOTHER (DEFENDANTS) V. GOSWAMI RAJJAN LAL
(PLAINTIFF) AND OTHERS (DEFENDANTS).*

*Mortgage—Two mortgagees advancing money in equal shares—Discharge of
debtor by one not binding on the other mortgagee.*

One of two mortgagees who have advanced the mortgage money equally cannot give a good discharge for the entire mortgage debt without the consent of or reference to his co-mortgagee. *Manzur Ali v. Mahmud-un-nissa* (1) followed. *Bhup Singh v. Zain-ul-Abdin* (2) and *Barber Maran v. Ramana Goundan* (3) distinguished.

THE facts of this case were as follows:—

One Thakur Das executed a mortgage in respect of certain property in favour of two persons, Chandi Prasad and Brij Mohan Lal, each of whom provided half of the advance, on the 2nd July, 1898. On the 2nd of April, 1901, Thakur Das sold his equity of redemption in the mortgaged property to Chandi Prasad, one of the mortgagees. The purchase money was more than sufficient to satisfy the whole of the mortgage debt. Brij Mohan Lal, the other mortgagee, was no party to the sale transaction. Subsequent to the purchase Chandi Prasad sold the property to Ram Chandra, the appellant, and Brij Mohan Lal sold his mortgagee rights in it to Rajjan Lal, the plaintiff. Rajjan Lal brought the suit for sale of the property to recover the portion of the mortgage debt due to his assignor, Brij Mohan Lal. The main defence raised was that the mortgage was entirely satisfied by the sale made by Thakur Das to Chandi Prasad and that the plaintiff had consequently no right to maintain the suit.

Dr. *Tej Bahadur Supru*, for the appellant:—

The sale by Thakur Das of his interest in the mortgaged property in favour of one of the mortgagees amounted to a complete discharge of the mortgage debt. It was immaterial whether Brij Mohan, the other mortgagee, was a party to the sale or not. He referred to *Manzur Ali v. Mahmud-un-nissa* (1) *Bhup Singh v. Zain-ul-Abdin* (2) and *Barber Maran v. Ramana Goundan* (3) and submitted that the two latter rulings

* Second Appeal No. 905 of 1908 from a decree of B. J. Dalal, District Judge of Agra, dated the 27th of May, 1908, modifying a decree of Shiva Prasad, Subordinate Judge of Agra, dated the 19th of December, 1907.

(1) (1902) I. L. R., 28 All., 155. (2) (1886) I. L. R., 9 All., 205.
(3) (1897) I. L. R., 20 Mad., 461.

were in his favour. He commented upon the ruling in 25 All., 155, which was against him. Under section 60 of the Transfer of Property Act, 1882, he submitted, a mortgagor could redeem the whole of the mortgaged property from one of the several mortgagees. If he was not allowed to do so, one single transaction could be the subject of several litigations at the instance of each mortgagee.

The question has to be determined on evidence whether the money was advanced by the mortgagees in specific shares. There is nothing to show in the mortgage bond that the money was so advanced. The mortgage was indivisible and one of the mortgagees could not bring a separate suit for his share in the mortgage debt unless he could obtain the consent of the mortgagor to that effect.

Dr. *Satish Chandra Banerji*, for the respondents, was not called upon.

STANLEY, C. J., and KNOX, J.—This appeal arises out of a suit for sale on a mortgage under the following circumstances. One Thakur Das executed a mortgage deed of the property in suit in favour of Chandi Prasad and Brij Mohan Lal on the 2nd of July, 1893, each of the mortgagees providing half of the advance. On the 2nd of April, 1901, Thakur Das sold his equity of redemption in the mortgaged property to the mortgagee, Chandi Prasad, the amount of the purchase money being more than sufficient to satisfy the mortgage debt in full. Brij Mohan Lal was no party to that transaction. Chandi Prasad then sold the property to the appellants in this appeal. The mortgagee, Brij Mohan Lal, whose share in the mortgage debt had not been satisfied, sold his mortgagee rights to the plaintiff respondent Rajjan Lal. Rajjan Lal then brought the suit out of which this appeal has arisen for recovery by sale of the mortgaged property of the portion of the mortgage debt to which Brij Mohan Lal was originally entitled. The main defence was that the mortgage was entirely satisfied by the sale to Chandi Prasad and that Brij Mohan had no right to maintain the suit. This raises the question whether one of two mortgagees, who advanced the mortgage money equally, can give a good discharge for the entire mortgage debt without the consent of or reference to his co-mortgagee. It was decided in

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the case of *Manzur Ali v. Mahmud-un-nissa* (1), to which one of us was a party, that he could not do so. In that case it was held that, in the case of co-obligees of a money bond, in the absence of anything to the contrary, the presumption of law is that they are entitled to the debt in equal shares as tenants in common. It is contended on behalf of the appellants that the decision in this case is in conflict with two decisions. The first is the case of *Bhup Singh v. Zain-ul-Abdin* (2). In that case, however, it will be seen that the bond with which the judgment was concerned was described as a joint bond, and not a mortgage, as in this case, to which the mortgagees contributed their money equally. The same is to be said of the other decision in *Barber Maran v. Ramana Goundan* (3). In that case the money due upon a mortgage was paid to one of two mortgagees, who gave an acquittance without the knowledge of the other mortgagee, and it was held that the mortgage was discharged, and the plaintiff who brought his suit to recover his share of the mortgage debt, which had not been paid to him, was not entitled to sue. In that case too, as appears from the judgment, the money was advanced by persons who were jointly entitled to it, and not severally. The learned Judges who decided it observe in their judgment:—
“The question raised by this appeal is whether a payment made to one of two persons jointly entitled under a mortgage bond can be pleaded as a valid discharge of the debt in an action brought by the other person interested in the bond.” We are of opinion that the case of *Manzur Ali v. Mahmud-un-nissa* was rightly decided and we do not think that we ought to go behind it. We therefore dismiss the appeal with costs.

Appeal dismissed.

(1) (1902) I. L. R., 25 All., 155.

(2) (1896) I. L. R., 9 All., 205.

(3) (1897) I. L. R., 20 Mad., 461.