

1920

MOJIZ
FATIMA
BEGAM
v,
ALI AKBAR.

to the date of the formal order appointing Saiyid Ali Akbar to be lambardar of this mahal. To this extent the lower appellate court may admit fresh evidence at the request of either party. Ten days will be allowed for objections.

Issues remitted.

Before Sir Greenwood Mears, Knight, Chief Justice, and Mr. Justice Muhammad Rafiq.

MUHAMMAD MJSHFAQ ALI KHAN AND OTHERS (PLAINTIFFS) v.

BANKE LAL AND OTHERS (DEFENDANTS)*.

1920
March, 17.

Redemption of mortgage—Tender of mortgage money—Offer to pay not accompanied by the production of any actual money.

The mortgagors of a usufructuary mortgage sent a notice to the mortgagees offering to pay a certain sum named therein, and asking for redemption of the mortgage, but no actual money was produced. *Held* that this did not amount to a legal tender of the sum due under the mortgage. *Chetan Das v. Gobind Saran* (1) referred to.

ON the 31st of March, 1880, Musammat Intizam-un-nissa Begam executed a usufructuary mortgage for Rs. 17,000 in favour of Santu Prasad. Both the mortgagor and the mortgagee died. On the 24th of June, 1916, the representatives of the mortgagor sent to the representatives of the mortgagee a notice offering to pay Rs. 17,000 to them and asking for redemption. To this the representatives of the mortgagee sent no reply. On the 30th of June, 1916, the mortgagors filed a suit for redemption. The defendants mortgagees raised the objection, *inter alia*, that the suit was premature because there had been no legal tender of the mortgage money by the mortgagors. The court of first instance accepted this plea, and also held that, even if the notice referred to amounted to a good tender, it was made at a wrong time and not in conformity with the terms of the mortgage deed. The court, therefore, dismissed the suit. Thereupon the plaintiffs appealed to the High Court.

Mr. B. E. O'Connor and Mr. Muhammad Ishaq Khan, for the appellants.

The Hon'ble Pandit Moti Lal Nehru, for the respondents.

* First Appeal No. 278 of 1917, from a decree of Ram Chandra Saksena, Additional Subordinate Judge of Moradabad, dated the 17th of April, 1917.

(1) (1914) I. L. R., 36 All., 139.

MEARS, C. J., and MUHAMMAD RAFIQ, J. :—This appeal arises out of a suit brought by the plaintiffs appellants in the court below for redemption of a mortgage, dated the 31st of March, 1880. The mortgage was executed by one Musammat Intizam-un-nissa Begam in lieu of Rs. 17,000. The mortgage was usufructuary and was given to one Santu Prasad. Both the mortgagor and the mortgagee are dead. The plaintiffs appellants represent the mortgagor and the defendants respondents represent the mortgagee. On the 24th of June, 1916, the plaintiffs sent a notice to the defendants offering to pay Rs. 17,000 to them and asking for redemption. The defendants sent no reply. On the 30th of June, 1916, the suit out of which this appeal has arisen was instituted by the plaintiffs for the redemption of the mortgage of 1880. Several objections were taken to the suit, one of which was that the suit was premature, inasmuch as no legal tender had been made. The learned Subordinate Judge yielded to this plea and dismissed the suit. He also held that the offer by notice, even if it were considered a good offer, was made at the wrong time and was against the terms of the mortgage deed. In appeal to this Court both pleas decided by the court below are contested. It is argued on behalf of the plaintiffs appellants that the offer to redeem the mortgage by notice amounted to a legal tender of the mortgage money. We are unable to agree with this contention. A similar point was raised in the case of *Chetan Das v. Gobind Saran* (1) and a Bench of this Court held that "an offer by letter of the amount due under a mortgage is not a good tender within the meaning of section 84 of the Transfer of Property Act. It is necessary that the money should be actually produced unless it can be shown that the person entitled to receive the money has waived this condition." In the present case it is not stated that the money was actually produced or tendered to the defendants and redemption asked. Nor is it shown that the defendants waived their right of receiving the money and agreed to accept the notice in lieu thereof. We think the learned Subordinate Judge was right in holding that no proper tender had been made by the plaintiffs as required by law.

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MUHAMMAD
MUSHTAQ
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(1) (1914) I. L. B., 86 AU., 139

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v.
BANKER LAL.

We think that the second contention for the plaintiffs that a tender made in June would be a valid tender is right if made within time—the end of June.

The appeal, therefore, fails and is dismissed with costs. In calculating the costs of this Court the office will exclude the cost of printing the evidence on behalf of the respondents, as that evidence was not necessary for the disposal of the points raised in this appeal.

Appeal dismissed.

PRIVY COUNCIL.

LAL JAGDISH BAHADUR SINGH (PLAINTIFF) v. MAHABIR PRASAD SINGH (DEFENDANT).

And two other appeals: three appeals consolidated.

[On appeal from the Court of the Judicial Commissioner of Oudh].

Oudh Estates Act (I of 1869), sections 2 and 16—Transfer by taluqdar of part of taluq—Transferee's title based on will of deceased taluqdar—Transfer in accordance with will—Absence of registration under Act.

These appeals related to lands owned by the taluqdar of Dhangarh whose name was one of those entered in the 4th list prepared under section 8 of the Oudh Estates Act (I of 1869). He died in 1896, leaving a great-grandson, the appellant, and three grandsons (uncles of the appellant) the respondents; and having made a will, dated the 30th of August, 1892, and registered under section 13 of the Act, by which he devised the taluq to the appellant, a minor, and appointed the mother of the boy to be his guardian and the first respondent to be manager of the estate during his minority. The will also provided that in case the respondents separated from the appellant, they should receive a maintenance allowance in the form of grants of taluqdari villages to be selected by the appellant. On the death of the testator the first respondent entered on the management of the estate in accordance with the directions of the will until 1908 when the appellant attained his majority and assumed possession and control of it, the respondents continuing to reside with him. But in 1910 they separated from the appellant, and he made grants to them of villages, of which mutation of names took place in 1911, the villages declared to be held by the several respondents "for generation after generation without right of transfer."

Section 16 of Act I of 1839 enacts that no transfer otherwise than by gift of any estate or any portion thereof, or of any interest therein made by a taluqdar, . . . under the provisions of this Act shall be valid unless made by a registered instrument signed by the transferor, and attested by two or more

*Present: Viscount CAVE, Lord MOULTON, Sir JOHN EDGE, and Mr. AMERU ALI.

*P. C.
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January, 26,
27, February,
17.