

Before Mr. Justice Daniels and Mr. Justice King.

JWALA PRASAD AND ANOTHER (DEFENDANTS) v. MOHAN LAL AND OTHERS (PLAINTIFFS).*

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May, 23.

Act No. XVI of 1908 (Indian Registration Act), section 17 (2) (xi)—Mortgage—Receipt for mortgage money—Whether purporting to extinguish the mortgage or not—Agreement to relinquish interest—Evidence—Act No. I of 1872 (Indian Evidence Act), section 92.

A receipt for money payable on a mortgage did not expressly state that the payment was accepted in full satisfaction of the mortgage debt, but contained a promise to return the mortgage deed.

Held, that this receipt must be taken as purporting to extinguish the mortgage within the meaning of section 17(2) (xi) of the Indian Registration Act, 1908, and, being unregistered, was inadmissible in evidence. *Neelamani Patraik Mussakh v. Sukaduvu Beharu* (1), distinguished. *Piari Lal v. Mahan* (2), dissented from.

Held also, that an alleged oral agreement on the part of the mortgagees to relinquish their right to interest is inadmissible under section 92 of the Indian Evidence Act, 1872.

THE facts of this case were as follows:—

On the 1st of June, 1908, one Debi Das mortgaged his house to Durga Prasad for Rs. 200 with compound interest at Rs. 37-8 per annum with yearly rests. On the 23rd of December, 1915, Durga Prasad assigned his mortgage to Mohan Lal and Salig Ram, nephews of Debi Das, the mortgagor, for a consideration of Rs. 200 only, although nothing had been paid on account of principal or interest up to date.

On the 27th of August, 1919, Debi Das sold the house to one Jwala Prasad for Rs. 500, leaving

* Second Appeal No. 1823 of 1923 from a decree of Ram Chandra, Additional Judge of Bareilly, dated the 29th of September, 1923, confirming a decree of Preo Nath Ghose, Subordinate Judge of Bareilly, dated the 30th of April, 1921.

(1) (1920) I.L.R., 49 Mad., 808.

(2) (1912) I.L.R., 34 All., 528.

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Rs. 200 with the latter for payment to the mortgagees. Four days later Jwala Prasad paid Rs. 200 to one of the mortgagees, namely, Salig Ram, who gave a receipt for the same on account of the mortgage money and promised to return the mortgage-deed.

Thereafter Mohan Lal sued to recover the mortgage money. It was pleaded that the mortgagees agreed to forego all the interest due on the mortgage money and that Salig Ram had accepted Rs. 200 in full discharge of the mortgage debt and that his receipt was binding upon Mohan Lal, his co-mortgagee, and operated to extinguish the mortgage.

The court of first instance gave a decree for the amount claimed less Rs. 200 which had been paid to Salig Ram and this decree was upheld by the lower appellate court. The defendants appealed to the High Court.

Pandit *Uma Shankar Bajpai*, for the appellants.

Dr. *Kailas Nath Katju*, for the respondents.

THE judgement of the Court (DANIELS and KING, JJ.), after reciting the facts as above, thus continued:—

It is urged in second appeal that the circumstances of the case point to the fact that the mortgagees relinquished their right to interest. The lower courts were clearly right in holding that the alleged oral agreement to relinquish the interest on the mortgage money could not be proved. Evidence to prove such an oral agreement is inadmissible under section 92 of the Evidence Act.

It is further urged that the receipt executed by Salig Ram, on a proper construction, evidences the

satisfaction of the entire mortgage. The receipt does not expressly mention that Salig Ram accepted the sum in full satisfaction of the whole mortgage debt, but we think that it must be construed in this sense because Salig Ram goes on to say "when Mohan Lal comes, I will return the mortgage-deed." This promise to return the mortgage-deed which was in the possession of his co-mortgagee clearly shows that Salig Ram accepted the Rs. 200 in full satisfaction of the mortgage debt, since otherwise he would not have promised to return the mortgage-deed.

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The question arises whether this receipt is admissible in evidence without registration. Under section 17(2) (xi) of the Registration Act, 1908, a receipt for payment of money due under a mortgage is exempt from the necessity for registration when the receipt does not purport to extinguish the mortgage. The appellant is, therefore, on the horns of a dilemma. If the receipt is construed as purporting to extinguish the mortgage, then it is inadmissible in evidence for non-registration. If, on the other hand, the receipt is not construed as purporting to extinguish the mortgage, then the mortgage remains in force and can be sued upon by the mortgagee Mohan Lal. The receipt would then be construed merely as acknowledging payment of Rs. 200 on account of the mortgage debt without extinguishing the mortgage, and the courts below have construed the receipt in this sense.

The appellant relies upon the rulings in *Neelamani Patnaik Mussadi v. Sukaduvu Beharu* (1), and *Piari Lal v. Makhan* (2). The Madras ruling can be distinguished on the ground that in that case the mortgagee did not agree to return the mortgage-deed. Indeed the learned Judges who decided that case were

(1) (1920) I.L.R., 43 Mad., 803.

(2) (1912) I.L.R., 34 All., 528.

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at pains to distinguish it from two other cases in which there was an agreement to return the mortgage-deed. The Allahabad ruling does no doubt support the appellants' contention. In that case a receipt was given for money due upon a mortgage in the following terms:—"The bond is returned. No money remains due." It was held that this receipt did not purport to extinguish the mortgage and that the receipt was therefore admissible in evidence although unregistered. With all due respect to the learned Judges who decided that case, we are unable to agree with this view. When the mortgagee gives a written acknowledgement that the mortgage debt has been satisfied in full and that nothing further remains to be paid and goes on to say that he has returned the mortgage bond, in our opinion this acknowledgement does purport to extinguish the mortgage. It is difficult to see how the mortgagee could extinguish the mortgage in clearer terms and therefore in our opinion such a receipt would require registration.

The same argument applies to the case before us. We hold that the receipt, on a proper construction, does purport to extinguish the mortgage and therefore it is inadmissible in evidence owing to non-registration.

On the view we have taken that the appellant has failed to prove that the mortgage has been extinguished, it is unnecessary for us to determine the effect of the payment to one co-mortgagee as extinguishing the mortgage debt and binding his co-mortgagee.

We dismiss the appeal with costs.

Appeal dismissed.