

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Fforde.

JAGGI MAL (PLAINTIFF) Appellant

versus

ARYA RAM AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 900 of 1922.

1926

April 1.

Regulation XVII of 1806, section 8—Notice of foreclosure—what it should contain—Fatal defect—Regulation 1 of 1798, section 2—explained.

Held, that the omission to make specific reference to section 7 of Regulation XVII of 1806 and to section 2 of Regulation 1 of 1798 in a notice of foreclosure under section 8 of Regulation XVII of 1806 is not a fatal defect if the purport of the sections is contained therein, nor is the demand in the notice of a larger sum than was actually payable at the time.

Barkat Rai v. Ali (1), referred to.

Second appeal from the decree of Rai Bahadur Lala Sri Ram, Poplai, District Judge, Hissar, dated the 31st January 1922, reversing that of Lala Swraj Narain, Subordinate Judge, 1st class, Gurgaon, dated the 21st April 1921, and dismissing the plaintiff's suit.

NAWAL KISHORE, for Appellant.

SHAMAIR CHAND, for Respondents.

JUDGMENT.

BROADWAY J.—On the 29th July 1889, Hukam BROADWAY J. Chand and others, since deceased, mortgaged a certain *nauhra* or stable to Bholu Singh for Rs. 1,000. The mortgage was by way of conditional sale for a term of seven years, the condition being that if the principal, interest and costs of repairs were not paid by the

1926

JAGGI MAL

v.

ARYA RAM.

BROADWAY J.

end of the said seven years the transaction would be considered to be one of sale. The mortgage was with possession and possession was given to the mortgagee. Nothing was paid and on the 29th May 1919 the heirs of Bhola Singh, who had died, applied to the District Judge of Hissar for the issue to the surviving mortgagor Hukam Chand of a notice of foreclosure under section 8 of Regulation XVII of 1806. Notice was issued on the 4th June 1919 and served on Hukam Chand on the 10th of that month.

Before the expiry of the year of grace, on the 27th May 1920, Hukam Chand sold the equity of redemption to Jaggi Mal who, on the 7th June 1920, instituted a suit for redemption on payment of Rs. 1,360. It was claimed that the notice issued on the 4th of June 1919 was null and void and that the mortgage was a subsisting one. It was also averred in the plaint that the sum of Rs. 1,360 had been tendered to the mortgagees who had refused to receive it.

The defendants contested the suit and pleaded the validity of the notice and in the alternative claimed a sum of Rs. 3,400 as due on account of principal and interest and the costs of repairs. They also asked for interest till the date of payment.

The trial Court held that the notice was defective—

- (1) because it omitted to state that the redemption was to be effected in the manner provided for by section 7 of Regulation XVII of 1806;
- (2) because section 7 of Regulation XVII of 1806 was not mentioned in the notice; and
- (3) because section 7 had not been correctly copied out in the notice.

The plaintiff was, therefore, granted a decree on payment of a sum of Rs. 2,180.

The plaintiff appealed against that decree objecting to the amount allowed and the defendants filed cross-objections attacking the finding as to the invalidity of the notice. The learned District Judge held that the notice was perfectly valid and dismissed the plaintiff's suit with costs throughout.

The plaintiff Jaggi Mal has now come up to this Court in second appeal through Mr. Nawal Kishore and Mr. Shamair Chand has represented the respondents.

The first point for determination is whether the notice was valid. It appears that the notice issued was in the form prescribed as No. 165. It is true that section 7 of the Regulation was not specifically referred to in it and authorities have been cited at the Bar in which this omission has been considered a fatal defect. More recent authorities, however, have laid down that the omission to mention this section is not fatal, provided the purport of the section is given in the notice. An examination of the notice shows that the purport of section 7 is contained therein.

Again it is urged that section 2 of Regulation I of 1798 should have been specifically referred to. In my opinion, so long as the purport of that section is given in the notice, specific reference to it is not imperatively necessary. Regulation I of 1798 lays down the procedure to be adopted by a borrower or mortgagor to preserve his right of redemption under deeds of *bai' bilwafa* or conditional sales of land. It lays down that when money is lent on *bai' bilwafa* or on the conditional sale of land, the borrower, if he desires to redeem the land by payment of the money lent

1926

JAGGI MAL

v.

ARYA RAM.

BROADWAY J.

1926

JAGGI MAL

v.

ARYA RAM.

BROADWAY J.

upon it, may, if the lender is not in possession of the land, tender or make payment of or deposit in Court the principal sum borrowed and that on such deposit the Court shall issue notice to the lender as prescribed in section 2. A *proviso* to that section lays down that the borrower may deposit a sum less than the sum above referred to, alleging that the sum so deposited is the total amount due to the vendor and that on such a deposit being made the Court shall receive it and issue notice as prescribed in that section. In the present case the notice issued to Hukam Chand informed him that he should pay a certain sum to the mortgagees and goes on to say, "or the balance of the sum remaining undischarged", so that it is clear that Hukam Chand was notified that he could pay into Court a lesser sum than that mentioned in the notice if he thought fit, the payment of the lesser sum being, of course, at his risk.

After a careful consideration of the Regulations in question and the notice issued, I am of opinion that there is no fatal defect in the said notice and that the only error of any importance in the notice is that instead of calling upon Hukam Chand to pay a sum of Rs. 1,000, that is to say the actual sum lent under the conditional sale, he was called upon to pay a sum of Rs. 3,400, as well as to pay interest. The details of this sum of Rs. 3,400 were given in the notice. The principal amount was shown as Rs. 1,000, interest was shown as Rs. 1,650 and the costs of repairs as Rs. 750. I am in agreement with Mr. Nawal Kishore that in this case only the item of Rs. 1,000 should have been shown as payable. The words of the notice between asterisks commencing with 'together' and concluding with 'thereon' should have been scored through and the attention of the Court is drawn to

the necessity of a strict compliance with the rules for filling in the prescribed forms.

The demand for a larger sum than was actually payable at that stage cannot, however, be regarded as a fatal defect in the notice as was held in *Barkat Rai v. Ali* (1) by Rattigan and Scott-Smith JJ. Mr. Nawal Kishore sought to distinguish this case by pointing out that it dealt with a mortgage without possession but it seems to me that the principle enunciated in that authority applies equally to cases of mortgages with possession. The object of the Regulation of 1806 is to give a warning to the mortgagor so as to enable him by taking action under the Regulation to preserve his right to redeem. He was specifically told in this notice that the principal sum payable was Rs. 1,000 and had he deposited that sum in Court his right to redeem would have been preserved, any dispute in regard to other amounts claimed being settled at a later stage. In my opinion, therefore, the view taken by the learned District Judge is correct and the notice in this case was valid.

I would, therefore, dismiss this appeal with costs.

FFORDE J.—I agree.

N. F. E.

1926

JAGGI MAL

v.

ARYA RAM.

BROADWAY J.

FFORDE J.

Appeal dismissed.

(1) 91 P. R. 1913.