

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Martineau.

MAHL SINGH (DEFENDANT) Appellant

versus

AMAR NATH AND OTHERS (PLAINTIFFS) } Respondents.
AND JODH SINGH (DEFENDANT) — }

Civil Appeal No. 851 of 1925.

Mortgage—Several mortgages on same property—Owner paying off first mortgage—Presumption of intention to keep it alive for his benefit—Priority to subsequent mortgagee—money spent on improvements.

Where there are several mortgages on a property the owner of the property may, by paying off an earlier mortgage, keep it alive for his benefit and then come in before the later mortgagee, and in the absence of an indication to the contrary it is to be presumed that the owner intended to keep alive the previous charge if it would be for his benefit.

Malireddi v. Gopalakrishnayya (1), Gokaldas-Gopaldas v. Puranmal-Premasukhdas (2), Dinobundhu Shaw Chowdhry v. Jogmaya Dasi (3), and Mahomed Ibrahim Khan v. Ambika Pershad Singh (4), referred to.

Held also, that where the earlier mortgage deed contained a clause by which the mortgagee was to be reimbursed at the time of redemption for any expenditure incurred by him during the currency of the mortgage, the owner, who on payment of the amount due to the mortgagee stood in the latter's shoes, was entitled to the benefit of that condition and could claim as a prior charge the sum which he spent on improving the property.

Second appeal from the decree of Rai Bahadur Lala Ganga Ram, Soni, District Judge, Gujranwala, dated the 7th January 1925, modifying that of Sheikh Ali Mohammad, Senior Subordinate Judge,

(1) (1923) I.L.R. 47 Mad. 190 (P.C.). (3) (1902) I.L.R. 29 Cal. 154 (P.C.).
(2) (1884) I.L.R. 10 Cal. 1035 (P.C.). (4) (1912) I.L.R. 39 Cal. 527 (P.C.).

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Gujranwala, dated the 29th August 1924, and disallowing priority in regard to costs of improvements.

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TEK CHAND and NAWAL KISHORE, for Appellant.

G. C. NARANG and AMAR NATH, for Respondents.

The judgment of the Court was delivered by—

MARTINEAU J.—Five shops belonging to Jodh Singh, defendant No. 1, and his brother Rattan Singh, were mortgaged by them in 1917 to Maya Ram with possession for Rs. 3,000. In 1918 Jodh Singh mortgaged his half share to the plaintiffs' predecessors-in-title for Rs. 900. No mention was made in the second mortgage deed of the prior mortgage. In 1920 Jodh Singh and Rattan Singh sold the shops to the second defendant Mahl Singh for Rs. 3,000. The mortgage to Maya Ram was mentioned in the sale deed, but not the mortgage to the plaintiffs. The latter have now sued on their mortgage deed for the recovery of the amount due to them by the sale of half of the mortgaged property and have been given a decree.

Mahl Singh had after his purchase paid to Maya Ram the amount due on his mortgage, namely, Rs. 3,299-6-0, and made improvements in the property on which it has been found that he spent Rs. 2,626, and he claimed to be entitled to a prior charge in respect of half of each of these sums. The trial Court held that he was entitled to priority in respect of both items, but the lower appellate Court has held that he has a prior charge only in respect of the payment made to Maya Ram. He has filed a second appeal and the plaintiffs have lodged cross-objections.

In *Malireddi v. Gopalakrishnayya* (1) it was held by the Privy Council that where there are several

(1) (1923) I.L.R. 47 Mad. 190 (P.C.).

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mortgages on a property the owner of the property may, if he pays off an earlier mortgage, keep it alive for his benefit and then come in before the later mortgagee. It was also held that in the absence of an indication to the contrary it is to be presumed that the owner intended to keep alive the previous charge if it would be for his benefit, and the same principle has been laid down in other decisions of the Privy Council reported as *Gokaldas-Gopaldas v. Puranmal-Premasukhdas* (1), *Dinobundhu Shaw Chowdhry v. Jogmaya Dasi* (2) and *Mahomed Ibrahim Khan v. Ambika Pershad Singh* (3). We agree therefore with the lower appellate Court that the appellant must be taken to have intended to keep the mortgage in favour of Maya Ram alive for his benefit, there being nothing to show the contrary, and that he is entitled to priority in respect of the sum which he paid to Maya Ram on account of Jodh Singh's share.

With regard to the expenditure on improvements, it is to be observed that Maya Ram's mortgage deed contained a clause by which he was to be reimbursed at the time of redemption for any expenditure incurred by him during the currency of the mortgage. The appellant, who on payment of the amount due to Maya Ram stood in the latter's shoes, is entitled to the benefit of that condition, and the sum which he spent on improving the property must be allowed as a prior charge.

We accordingly dismiss the cross-objections and accepting the appeal we set aside the decree of the lower appellate Court and restore that of the trial Court. The plaintiffs will pay the appellant's costs

(1) (1884) I.L.R. 10 Cal. 1035 (P.C.). (2) (1902) I.L.R. 29 Cal. 154 (P.C.).
(3) (1912) I.L.R. 39 Cal. 527 (P.C.).

in this Court and the lower appellate Court. Costs in the trial Court will be paid as directed by that Court.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Campbell and Mr. Justice Zafar Ali.

ATMA SINGH (DEFENDANT) Appellant

versus

NATHU MAL (PLAINTIFF),

GANGA BISHEN AND OTHERS } Respondents.
(DEFENDANTS)

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Civil Appeal No. 1371 of 1922

*Court Fees Act, VII of 1870, schedule I, article 1—
Appeal—valuation of—where liability of certain property
under the decree is disputed.*

The plaintiff sued his original vendees and the subsequent transferees for the balance of the price of a house and shop which he had sold, and obtained a decree, under which he was entitled to realise a portion of the decretal amount by sale of the shop of which defendant A was the last transferee. A appealed against so much of the decree as rendered his property liable and sought that he should be released from the decree.

Held, that the proper stamp for the purposes of court-fee on the appeal was one *ad valorem* on the value of the decree, not exceeding, however, the value of the shop.

Kesavarapu Ramakrishna Reddi v. Kotta Kota Reddi (1), followed.

Venkappa v. Narasimha (2), *Jugal Pershad Singh v. Parbhu Narain Jha* (3), and *Tharu Mal v. Chandu Ram* (4), referred to.

(1) (1906) I.L.R. 30 Mad. 96 (F.B.). (3) (1910) I.L.R. 37 Cal. 914.

(2) (1887) I.L.R. 10 Mad. 187.

(4) 11 P. R. 1916.