

The Indian Law Reports

APPELLATE CIVIL

Before Tek Chand and P. D. Sharma, JJ.

GURDIAL SINGH AND OTHERS,—Appellants.

versus

KARTAR SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 759 of 1961.

Registration Act (XVI of 1908)—S. 17(1)(c) and (2)(xi)—Receipt for payment of money (other than an endorsement on a mortgage deed) mentioning not only the payment of the full mortgage amount but also the extinction of the mortgage—Whether requires registration.

1962

Nov., 5th.

Held, that in view of the plain language of sub-sections 1(c) and (2)(xi) of section 17 of the Indian Registration Act, a receipt for payment of money under a mortgage (other than an endorsement on a mortgage deed) issued by a mortgagee mentioning not only the payment of full mortgage amount but also the extinction of the mortgage requires registration.

Kaur Chand v. Des Raj and others (1) distinguished.

Case referred by Hon'ble Mr. Justice H. R. Khanna, on 1st June, 1962 to a Division Bench for decision of the important question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice Tek Chand and Hon'ble Mr. Justice P. D. Sharma, after deciding the question of law referred to it returned the case to the Single Bench on 5th November, 1962, for its final decision. The case was finally decided by Hon'ble Mr. Justice H. R. Khanna, on 6th March, 1963.

Second Appeal from the decree of the Court of Shri F. S. Gill, Senior Subordinate Judge, with Enhanced

(1) 1960 P.L.R. 566.

Appellate Powers, Ludhiana, dated the 28th April, 1961, reversing that of Shri Nathu Ram Aggarwal, Sub-Judge, 1st Class, Jagraon, dated the 31st March, 1960 and granting the plaintiff a decree for declaration as prayed for with costs of the appellate Court.

Y. P. GANDHI AND V. P. GANDHI, ADVOCATES, for the Appellants.

B. S. BAJWA, ADVOCATE, for the Respondents.

ORDER

Sharma, J.

SHARMA, J.—Kapur Singh and Ajmer Singh defendants Nos. 1 and 2 mortgaged with possession their land including the land in dispute, 22 *kanals* 15 *marlas* in area for Rs. 5,500 in favour of Kehar Singh deceased father of defendants Nos. 3 to 5. Subsequently, they mortgaged the land in dispute with possession in favour of Kartar Singh. The revenue authorities entered two mutations in the revenue records, one redeeming the first mortgage, and the second incorporating the subsequent mortgage, but these could not be sanctioned due to the dispute that has arisen between the parties. The plaintiff Kartar Singh, consequently, instituted the present suit for a declaration that he was a mortgagee with possession of the land in dispute for Rs. 6,500 and that the first mortgage had been redeemed. He alleged that the sum of Rs. 6,500 was paid by him,—*vide* receipt dated 8th June, 1956, to the mortgagers who in turn redeemed the first mortgage by paying Rs. 5,500 on the same date to the mortgagees and obtained a receipt in token thereof.

Gurdial Singh defendant No. 3 maintained that he along with his two brothers defendants Nos. 4 and 5 was in possession of the land as mortgagee and that they had not received the mortgage money. He denied the plaintiff's mortgage. Defendants Nos. 1 and 2, however, conceded having mortgaged the land for

Rs. 5,500 and not for Rs. 6,500 in favour of the plaintiff and further pleaded that the earlier mortgage had been redeemed by them on payment of Rs. 5,500 to defendants Nos. 3 to 5. According to them out of the land which had been mortgaged with defendants Nos. 3 to 5, three *kilas* were in possession of the plaintiff as mortgagee and the remaining four *kilas* were in their occupation.

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From the pleadings of the parties the following issues were settled :—

- (1) Whether defendants Nos. 1 and 2 mortgaged the land in suit with the plaintiff for Rs. 6,500?
- (2) Whether the amount of Rs. 5,500, the mortgage money, had been paid by the plaintiffs through defendants Nos. 1 and 2 to defendants Nos. 3 to 5?
- (3) Whether the suit in the present form does not lie?
- (4) Relief.

The learned trial Judge decided issue No. 1 in favour of the plaintiff and issue No. 3 against the defendants. Issue No. 2 was found against the plaintiff. The suit was dismissed. The learned Senior Subordinate Judge on appeal set aside the judgment and decree of the trial Court and granted plaintiff the decree prayed for with costs against the defendants. The first mortgagees, defendants Nos. 3 to 5, preferred an appeal against the judgments and decree of the learned Senior Subordinate Judge to this Court which came up for hearing before Khanna, J.

The plaintiff to prove redemption of the earlier mortgage relied upon the receipt dated 9th June, 1956, Exhibit D. 1. The trial Judge held the receipt inadmissible in evidence for want of registration, while the

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first appellate Court came to a contrary conclusion. The learned counsel for respondent No. 1 in the course of his arguments before the learned Single Judge impugned correctness of the first appellate Court's finding on the question of admissibility of the receipt in evidence. He referred to an earlier decision of this Court in *Kaur Chand v. Des Raj and others* (1), which laid down:—

“That where the mortgage money is discharged in full the mere statement that the mortgage is extinguished would be a mere surplusage because the very fact of the payment of the entire amount would *ipso facto* put an end to the mortgage. Nothing further has to be done by the mortgagee. It is only in those cases where the mortgage is extinguished on part-payment of the mortgage money that the endorsement which states that the mortgage is extinguished would require registration.”

The learned Single Judge observed that in receipt Exhibit D.1. the words “*Arazi Mazkur Fak Kar Dee Hai Yani Chhor Dee Hai*,” were not mere surplusage but an integral part thereof, and as such the receipt fell within the purview of section 17 (1) (c) of the Indian Registration Act and was thus inadmissible in evidence for want of registration. In his opinion the view he expressed was not in consonance with the rule of law as laid down in *Kaur Chand's case* and, therefore, desired that the point, “Does a receipt for payment of money under a mortgage (other than an endorsement on a mortgage deed) issued by a mortgagee require registration when the receipt mentions not only the payment of the full mortgage amount but also the extinction of the mortgage?” be decided by a larger

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Bench, in consequence, it has been placed before us for decision.

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Sub-sections (1)(c) and (2)(xi) of section 17 of the Indian Registration Act which are pertinent to the case run as follows:—

“17. (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

* * * * *

(c) Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

* * * * *

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

* * * * *

(xi) any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

* * * * *

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The learned counsel for the appellants contended that receipt Exhibit D.1. was for payment of money due under a mortgage and it also purported to extinguish the mortgage and that being so was not exempt from registration under clause (xi) of sub-section (2) of section 17 of the Indian Registration Act. His contention finds ample support from the plain language of the above provision of law and the decision taken by Tek Chand and Backett JJ. in *Naman and another v. Hari Singh* (2), where Tek Chand, J., while delivering judgement of the Court observed:

“After giving the matter careful consideration I am of opinion that the exemption in this clause covers any endorsement on a mortgage deed acknowledging payment of the whole or part of the mortgage money, irrespective of whether it contains words which expressly or by necessary implication, purport to extinguish the mortgage. But as regards other receipts (i.e., receipts other than endorsement) for payment of money due under a mortgage, the exemption can be claimed only if they do not purport to extinguish the mortgage. This view is supported by *Gopalaswami Iyer v. Kalyana Rangappa* (3), where the identical point was raised. Venkatasubba Rao, J., after referring to clause (xi) observed as follows:

This clause contemplates : (1) an endorsement on a mortgage deed; and (2) any other independent receipt for payment of money. In the case of an independent receipt it is necessary

(2) A.I.R. 1941 Lahore 246.

(3) A.I.R. 1929 Madras 348.

that it must not purport to extinguish the mortgage. But so far as an endorsement on the mortgage deed is concerned, no such limitation is placed."

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The same principle was enunciated in *Koti Bharna Lingappa v. S. Nilakantappayya Wadyar and others* (4), *Muhammad Hussain v. Karm Ilahi and another* (5), and *Mohamad Kasam v. Ranu Yesji Naik* (6).

In *Kaur Chand v. Des Raj and others* (1), the question was whether the endorsements on the mortgage deeds acknowledging the payment of the entire mortgage money were admissible in evidence or not, Mahajan, J., held that the endorsements were clearly admissible in evidence irrespectively of the fact that the same purported to extinguish the mortgage. His observations could not have any bearing on the point in dispute before us because here receipt of the mortgage money was not on the dorsal side of the mortgage deed but on a separate paper for which clause (xi) of sub-section (2) of section 17 of the Indian Registration Act provided that such receipts would be admissible in evidence without registration if those did not purport to extinguish a mortgage.

The learned counsel for Kartar Singh respondent relied on *Pandit Ram Kumar Missir and another v. Pandit Ram Nath Missir* (7), which also laid down that endorsement on mortgage deed was inadmissible in evidence to prove extinguishment of mortgage unless registered but it could be used as evidence of payment. This rather supports the stand taken by the opposite party inasmuch as receipt Exhibit D. 1 was relied upon to prove extinguishment of the mortgage.

(4) A.I.R. 1938 Madras 533.

(5) A.I.R. 1929 Lahore 312.

(6) B.L.R. (1907) IX 254.

(7) A.I.R. 1942 Patna 315.

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Another case cited before us was *Uppalakandi Kunhi Kutti Ali Haji v. Kunnam Mithal Kottappath Abdul Rahiman* (8), but in that as well it was held that language of the receipt did not indicate any intention to extinguish or limit the mortgagor's interest and, therefore, registration was unnecessary. In the instant case the receipt in so many words purports to extinguish the mortgage and so the *Madras case* can be of no help to the respondent. The third case, *Rajani Kanta Nath-Bhoumik v. Ali Naaz and others* (9), cited by the respondent's counsel also is of no avail to him because it is not clear whether the receipt granted therein by the mortgagee to the mortgagor in so many words purported to extinguish the mortgage. The usufructuary mortgagee admitted that his claim had been paid off and that he had released the property to the mortgagor's possession. The recital did not purport to extinguish the mortgage though the same might have led to it.

Keeping in view the plain language of sub-sections 1(c) and (2)(xi) of section 17 of the Indian Registration Act and the rule of law as laid down in the authorities cited by the learned counsel for the appellants we hold that a receipt for payment of money under a mortgage (other than an endorsement on a mortgage deed) issued by a mortgagee mentioning not only the payment of the full mortgage amount but also the extinction of the mortgage requires registration. The reference is answered accordingly.

The case should now go back to the learned Single Judge for disposal on merits.

Tek Chand, J.

TEK CHAND, J.—I agree.

K.S.K.

(8) I.L.R. (1896) 19 Mad. 288.
 (9) A.I.R. 1930 Cal. 79.