

Subhabhat BIn Babanbhat Vs. Vasudevbhat BIn Subhabhat and ors.

Subhabhat BIn Babanbhat Vs. Vasudevbhat BIn Subhabhat and ors.

SooperKanoon Citation : sooperkanoon.com/330336

Court : Mumbai

Decided On : Jul-04-1877

Reported in : (1878)ILR2Bom113

Judge : Michael Westropp, C.J. and ;Melvill, J.

Appellant : Subhabhat BIn Babanbhat

Respondent : Vasudevbhat BIn Subhabhat and ors.

Judgement :

Michael Westropp, C.J.

1. Although the deed of the 12th March 1832 (Exhibit 21) is on the face of it described as a mortgage, it is necessary to see whether its contents warrant that description. The grantee was already in possession under a mortgage of the 7th November 1820, and was under the new deed to receive the profits in liquidation of interest so far as they would go--and, as it appears to us, the grantor was not to be liable, to repay the principal money, or such balance of interest (if any) as might accrue upon it, unless he adopted a son. We do not perceive how, so long as he remained without making such an adoption, the grantee could have maintained any suit against him either for principal or interest--(vide Goodman v. Grierson, 2 B., and B. 274, 279, and per Cottenham L.C. in Williams v. Owen, 5 My. and Cr. 303, 308). In Howard v. Harris 1 Vern. 190 there was a covenant by the mortgagor to pay, upon which he might be sued by the mortgagee--a circumstance which

distinguishes that from the present case. Here, in fact, there would not have been any debt whatever due from the grantor until he adopted a son, and the grantee except in that event, would not have the usual remedies of a mortgagee. This, therefore, seems to us to be a case of a sale liable to be converted into a mortgage, and not like *Eamji v. Chinto* 1 Bom. H.C. Rep. 199, *Shankarbhai v. Khssibhai* 9 Bom. H. O. Rep. 69, and the cases there mentioned, which are instances of mortgages liable to be converted into sales.

2. There has not been any adoption by the grantor here, and he could not have redeemed unless he adopted a son. For these reasons we affirm the decree of the District Judge with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com