

Ramkrishna Sadashiv Vs. Chothmal

Ramkrishna Sadashiv Vs. Chothmal

SooperKanoon Citation : sooperkanoon.com/334123

Court : Mumbai

Decided On : Oct-11-1888

Reported in : (1889)ILR13Bom348

Judge : Charles Sargent, C.J. and; Scott, J.

Appellant : Ramkrishna Sadashiv

Respondent : Chothmal

Judgement :

Charles Sargent, C.J.

1. The facts in this case as found by the Acting Judge are that on 4th October, 1864, Narayan Kumbhar executed a mortgage of his house to one Khando. That on 25th June 1868, he sold the eastern half of his house to defendant, and that defendant then obtained possession of that half of the house. On 24th September, 1868, Khando sued Narayan on his mortgage of 1864, and obtained a decree on 28th November, 1868. On 27th July, 1875, Narayan passed an instalment bond to Khando for the balance due on the decree, and Rs. 25 on account of savai profits, giving the house as a security. Satisfaction of the decree was duly entered up and certified, and the mortgage was registered. On this mortgage bond Khando sued Narayan in 1882, and obtained a decree directing the mortgage money to be realized by sale of the mortgaged property in execution of which the house was sold to plaintiff on the 20th July, 1883, for Rs. 27.

2. It has been contended before us that the plaintiff can rely on the first mortgage to Khando passed on 4th October, 1864, on the ground that it must be deemed to have been kept alive by Khando when Narayan passed the second mortgage of 1882, and that the plaintiff thus acquired a title paramount to that of defendant in the eastern half purchased by him in 1868. The question in such cases doubtless depends on the intention of the parties to be gathered from all the circumstances--*Goluknath v. Lalla* I.L.R. Cal. 307 which was followed by this Court in *Dilabhdas v. Lakshmandas* I.L.R. 10 Bom. 88 . Here, however, a decree had been obtained on the mortgage of 1864, and all rights under that mortgage had become merged in the decree. Satisfaction of the decree was certified to the Court, and entered up, when the second mortgage of 1822 was passed; and the fact that the debt secured by the second mortgage is the balance of the old debt, is the only circumstance from which an intention to keep alive the decree could be inferred.

3. We agree with the Subordinate Judge that this circumstance alone is not sufficient, and that there are no rights under the old mortgage which the plaintiff can now assert as against the defendant in possession. We must, therefore, confirm the decree with costs.