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Doddappa Tippanna Vs. Somappa Ningappa

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Court : Mumbai

Decided On : Mar-19-1906

Reported in : (1906)8BOMLR550

Judge : Lawrence Jenkins, K.C.I.E., C.J. and ;Aston, J.

Appeal No. : Second Appeal No. 458 of 1905

Appellant : Doddappa Tippanna

Respondent : Somappa Ningappa

Judgement :

Lawrence Jenkins, K.C.I.E., C.J.

1. The mortgage to the plaintiff was in 1896, and thereby Ningappa, his mortgagor, purported to mortgage in the plaintiff's favour the entirety of Survey Nos. 153, 156 and 299 and a house.

2. In fact Ningappa, the mortgagor, was not exclusively entitled to those pieces of land. He was merely jointly interested in them with his brother Tippanna. Therefore all that the mortgagee took was his mortgagor's interest in those pieces of land and house.

3. In 1897 a partition suit was commenced with the result that a consent decree was passed under which Survey No. 156 amoiety of 199 and the whole of the

house were allotted to Ningappa's branch of the family, and Survey No. 153, and the other moiety of 199 to the brother's branch. The mortgagee the present plaintiff, was not a party to those proceedings and he was not bound by the result thereof.

4. He has brought this suit to recover the balance due on his mortgage.

5. But the decree passed in his favour has been in effect one whereby his mortgage rights were enforced against those portions of the property which on the partition were allotted to Ningappa's branch of the family.

6. The plaintiff is not satisfied with this, and (whether wisely or not it is not for us to discuss) he now insists upon what he calls his strict legal rights.

7. He must have those rights and they appear to us to be these : he is entitled to a declaration that he has by his mortgage a valid charge on the interest of the mortgagor in the specified pieces of land as that interest existed at the date of the mortgage in 1896.

8. We must, therefore, pass a decree in conformity with Section 86 of the Transfer of Property Act.

9. It is unnecessary in the circumstances of the case to direct an account as the amount due on the mortgage is ascertained to be Rs. 2,280. We accordingly order that in default of the defendant's paying on a day within six months from the date of this decree that amount with interest thereon at the rate of 15 percent per annum together with the costs as hereinafter provided, the mortgage property, that is to say, the undivided interest mortgaged to the plaintiff by Ningappa or a sufficient part thereof be sold and that the proceeds of the sale, after defraying therefrom the expenses of the sale, be paid into Court and applied in payment of the amount due to the plaintiff, and the balance, if any, be paid to the persons entitled to the same : and in case the net proceeds of such sale are insufficient for payment of the amount due on the mortgage, then the plaintiff will be at liberty to apply to the Court under Section 90 of the Transfer of Property Act for a decree for the deficiency.

10. Each party will bear his own costs in this Court and the lower appellate Court, but the plaintiff will get the costs awarded to him in the first Court.

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