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Court : Mumbai

Decided On : Nov-13-1922

Reported in : AIR1924Bom419; (1924)26BOMLR539

Judge : Shah, J.

Appeal No. : O.C.J. Suit No 2839 of 1922

Appellant : Jasraj Fooaji

Respondent : Akubai

Judgement :

Shah, J.

1. In this suit a preliminary question as to jurisdiction has been raised on behalf of defendants Nos. 2 and 3 who have filed their written statements, though the point is not raised in their written statements.

2. It is urged that as the property mortgaged is situated outside the limits of the original jurisdiction of the High Court this Court has no jurisdiction to entertain the suit on a mortgage bond relating to such property. In the present case the property is situated at Karachi and the defendants live at Poona. The debt is payable at Bombay or Poona or Karachi at the choice of the mortgagee under the bond and for the purpose of the present point it must be assumed that the debt is payable in

Bombay and that apart from the mortgage the suit to recover the debt would be within the jurisdiction of this Court. It is conceded that the contention that this Court has no jurisdiction to entertain this suit to enforce the mortgage in question is opposed to the ruling in *Holkar v. Dadabhai Cursetji Ashburner* I.L.R. (1890) 14 Bom. 353. Since that decision the practice of this Court has been to entertain such suits. But the learned counsel for defendants Nos 2 and 3 relies upon *Harendra Lal Roy Chowdhuri v. Hari Dassi Debi* (1914) L.R. 41 I A 110 : 16 Bom. L.R. 400 and contends that the view taken in *Holkar v. Dadabhai* must be taken to have been overruled. He relies upon the following passage in the judgment at page 120 of the report:--

The deed therefore could not be registered there nor had the Court of Ordinary Original Jurisdiction at Fort William in Bengal any jurisdiction to entertain the suit upon the mortgage bond and its decree is of no validity.

3. On behalf of the plaintiff it is urged that the Bombay view has not been considered in that case, that the decisions of this Court were not cited before their Lordships and that even after the decision in *Harendra Lal Roy Chowdhuri v. Hari Dassi Debi* the Court of Appeal has adhered to the view taken in *Holkar v. Dadabhai* and that the practice in this Court has not been altered. Mr. Campbell has relied upon the unreported judgment of Scott C.J. and Heaton J. in *Venkatrao Sethupathy v. Khimji Assur Virji* (1916) 26 Bom. L.R. 535.

4. It is hardly necessary for me to examine the point on its merits apart from the decisions on the point. Speaking for myself I find it difficult to reconcile the view taken by their Lordships of the Privy Council in *Harendra Lal Roy Chowdhuri v. Hari Dassi Debi* with the decision in *Holkar v. Dadabhai* and I should have been bound to give effect to that view, had it not been for a subsequent decision of the Court of Appeal which also is binding upon me. I have read the unreported judgment of the Court in Appeal with care. It is true that there is no reference therein to the case of *Harendra Lal Roy Chowdhuri v. Hari Dassi Debi*, but it is subsequent to the decision in *Harendra's* case and I have no reason to think and I would not be justified in assuming that *Harendra's* case was not considered by the Court of Appeal. The learned Chief Justice has approved of the view taken in

Holkar v. Dadabhai. It is common ground that the practice of this Court has been consistently to entertain such suits even after the judgment in Harendra Lal Roy Chowdhuri v. Hari Dassi Debi. It is really for the Court of Appeal or the Privy Council to reconsider this point if at all. So far as this Court is concerned the point must be treated as concluded by the judgment in Venkatrao Sethupathi v. Khimji Assur Virji. I, therefore, hold that the Court has jurisdiction to entertain this suit.

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