

Parmeshwar Dat Vs. Anardan Dat

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Court : Allahabad

Decided On : Nov-26-1914

Reported in : AIR1915All10(1); (1915)ILR37All113

Judge : Henry Richards, C.J. and ;Pramada Charan Benerji, J.

Appellant : Parmeshwar Dat

Respondent : Anardan Dat

Judgement :

Henry Richards, C.J. and Pramada Charan Benerji, J.

1. This appeal arises out of a suit on foot of a mortgage, dated the 22nd of March, 1900. Various pleas were taken, but the court of first instance decided in favour of the plaintiff and granted a decree. On appeal the learned District Judge reversed the order of the court of first instance and dismissed the plaintiff's suit on the sole ground that one Bhaia Lal was the real owner of the bond and that the plaintiff was merely a benamidar for him. It seems to us that the view of the District Judge was not correct. The alleged beneficial owner Bhaia Lal was actually produced as a witness for the plaintiff. He raised no objection whatever to the decree being made in favour of the plaintiff. The defendant never alleged that Bhaia Lal had made any claim, or raised any objection, to the amount of the bond being paid to the plaintiff. The plaintiff is the person named in the mortgage and was clearly entitled to sue, even if he was the benamidar. This was held in the case of Tad Ram v. Umrao

Singh (1899) I.L.R. 21 All. 380. There can not be the least doubt that the plaintiff could have given a perfectly valid discharge to the defendant if he had paid up the amount of the bond; and if the Court grants a decree to the plaintiff it is quite clear that Bhaia Lal could never sue again, even if we assume the finding of the lower appellate court to be correct that Bhaia Lal was in fact the real owner of the bond. We think that the view taken by the court of first instance on this point, namely, that the question of the ownership of the bond did not arise under the circumstances of the present case, was correct. We, accordingly, allow the appeal, set aside the decree of the court below and remand the case to the lower appellate court with directions to re-admit the appeal upon its original number on the file and to proceed to hear and determine the same according to law. The costs of both sides will be costs in the cause. The deficiency in the court fee in the lower appellate court of Rs. 5 due by the defendant must be made good before the appeal is heard. If that amount is not paid within a time to be fixed by the court, the appeal to that court by the defendant ought to be dismissed.

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