

Raghunath Prasad and ors. Vs. Jamna Prasad and anr.

Raghunath Prasad and ors. Vs. Jamna Prasad and anr.

SooperKanoon Citation : sooperkanoon.com/453445

Court : Allahabad

Decided On : Dec-19-1906

Reported in : (1907)ILR29All233

Judge : John Stanley, C.J. and ;William Burkitt, J.

Appellant : Raghunath Prasad and ors.

Respondent : Jamna Prasad and anr.

Judgement :

John Stanley, C.J. and William Burkitt, J.

1. This appeal arises out of a suit for sale on several mortgages, but the only one with which we are concerned is a mortgage of the 4th of September, 1894. By that mortgage 16 villages were hypothecated in favour of the plaintiffs to secure a sum of Rs. 32,000. There was a prior mortgage in existence at the date of this mortgage, namely, a mortgage of the 15th of December 1888, in favour of the same mortgagees. A suit was brought on foot of this mortgage, and a decree for sale was passed thereon, in execution of which 10 out of the 16 villages were sold and purchased by the plaintiffs, the mortgagees. The suit which has given rise to this appeal was brought by the plaintiffs on the 23rd of April 1904, for sale of the remaining six villages to satisfy the later mortgage of the 4th of September 1894. The learned (Subordinate Judge has given a decree for the sale of these villages, but decided that they were not liable to satisfy the whole of the mortgage debt, but

only so much of it as is rateably attributable to them, holding that the 10 villages which had been previously sold must be treated as liable to satisfy a proportionate share of the mortgage-debt. In the course of his judgment the learned Subordinate Judge says: 'The plaintiffs say that they have a right to proceed against the six unsold villages mortgaged in this bond and to charge the whole amount upon them. I think this the plaintiffs cannot do. The above villages were liable to pay not only the amount due on the bond of 1888, but also a proportionate amount of the sum due on the bond in suit. As the plaintiffs have become the owners of these villages by their purchase at auction, they must contribute rateably towards the claim under the bond of 1894.' We are wholly unable to agree with the learned Subordinate Judge in the view which he thus expressed. The 10 villages were sold to satisfy the earlier mortgage of the 15th of December 1888; and having been sold, those 10 villages must be treated as having been withdrawn from the operation of the later mortgage of the 4th of September 1894 by title paramount. This left the remaining villages alone liable to satisfy the puisne incumbrance. The learned Subordinate Judge is wrong in supposing that because the plaintiffs became the purchasers of the 10 villages, they must be treated as being in a different position from the position of a stranger if a stranger had purchased at the auction sale. This is not a correct view of the matter. It is immaterial whether it was a stranger who purchased at the auction sale held in execution of the decree on the earlier mortgage or the plaintiffs to the suit. The fact that the plaintiffs became the purchasers cannot be regarded as having the effect of making the property which was included in the earlier mortgage responsible for the satisfaction of a later incumbrance. This question has been already decided by this Bench in *Zahir Singh v. Bansi Singh* F.A. No. 63 of 1903, decided 20th April 1905. It was also the subject of decision in the case of *Bohra Thakur Das v. The Collector of Aligarh* (1906) I.L.R., 28 All., 593.

2. We therefore allow the appeal, modify the decree of the Court below and give a decree to the plaintiffs for the relief claimed in the plaint, that is. for the recovery of the entire amount of their debt as against the six villages remaining subject to their mortgage in default of payment by the mortgagors of the amount found to be due. We extend the time for payment for a period of six months from this date. We direct that the decree be modified accordingly. The appellants will have their costs

of this appeal.

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