Harani Vs. Ram Nath,

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Court : Allahabad

Decided On : May-19-1915

Reported in : (1915)ILR37All467

Judge : Henry Richards, C.J. and ;Tudball, J.

Appellant : Harani

Respondent : Ram Nath,; Jhunari and ors.

Judgement :

Henry Richards, C.J. and Tudball, J.

1. This appeal arises out of a suit to redeem a mortgage, dated the 18th of February, 1892. Ram Nath, the appellant, is one of the original mortgagees. He contends that the plaintiff' has no right to maintain the suit. It appears that after the date of the mortgage the mortgagors sold their equity of redemption to one Jagan Nath Ahir. Ram Nath Kayastha (to whom we shall hereafter refer as 'the pre-emptor') brought a suit for pre-emption against Jagan Nath Ahir, and obtained a decree which became final. When Ram Nath, the pre-emptor, applied to have his name recorded, the Collector under the provisions of Act II of 1903, made an order in November, 1910, refusing to sanction the permanent alienation in favour of the pre-emptor. By a later order he pointed out that all that he could do for ' the pre-emptor was to make him a usufructuary mortgagee for twenty years under the provisions of Section 14 of the Act. But seeing that there was already a

usufructuary mortgagee in possession, he pointed out that the only way in which the pre-emptor could get possession would be by redeeming the mortgage of the 18th of February, 1892. On the 29th of January, 1912, the representatives of the original mortgagors sold the property to the plaintiff. The plaintiff then instituted the present suit, which was met by the defence that the vendors of the plaintiff had no interest left of which they could make a transfer. It seems to us that this contention is not sound. The result of the pre-emption suit was that Jagan Nath Ahir ceased to have any interest in the property. The pre-emptor was substituted for him and the latter under the Collector's order was only a mortgagee. The consequence was that the ultimate right of redemption remained in the representatives of the original mortgagor. This right they were entitled to transfer to the plaintiff.

2. It is contended that having regard to the terms of the Collector's order the only parson who could redeem the mortgage was Ram Nath, the pre-emptor. No doubt Ram Nath was given a right of redemption, but that did not and could not take away the ultimate right of redemption which must have been left (as we think) in the representatives of the original mortgagors. The mortgage of the appellant is a mortgage which can be redeemed at any time. It is quite unnecessary for us in the present case to decide whether or not Ram Nath, the pre-emptor, could have insisted upon remaining in possession for the whole of the twenty years even if the representatives of the mortgagors were to redeem it, nor is it necessary for us to express any opinion as to the effect of the consent which appears to have been given in open court by the pre-emptor to the redemption of the property by the plaintiff.

3. It is lastly contended that Section 3 does not apply to alienations by pre-emption. We think that the section applies to all 'permanent alienations' even though the alienation is brought about by the exercise of a right of pre-emption, The policy of the Act is to prevent persons who wore not members of an agricultural tribe acquiring property. This would apply just as much to a person who was acquiring a permanent title by pre-emption as by voluntary alienations. We dismiss the appeal with costs.