

Banni Begam Vs. Khairati

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Court : Allahabad

Decided On : Mar-14-1908

Reported in : (1908)ILR30All240

Judge : Richards, J.

Appellant : Banni Begam

Respondent : Khairati

Judgement :

Richards, J.

1. Khairati, defendant in the present suit, brought a suit on the 29th August 1904 upon foot of a mortgage, dated the 10th December 1895, whereby Intizam Begam mortgaged the property, the subject matter of the present suit to him. He only made his mortgagor Intizam Begam, a defendant to the suit. A decree was obtained, but when Khairati applied for execution the property was claimed by Banni Begam, the mother-in-law of Intizam Begam. The present suit was then instituted by Banni Begam under the provisions of Section 283 of the Code of Civil Procedure. The Courts below have decided the suit in favour of Banni Begam on the simple ground that Khairati knew that Banni Begam claimed that Intizam Begam was benamidar for her, and that he was bound to make her a party to the suit he brought on foot of his mortgage. I have only to consider whether the lower Courts were justified in decreeing Banni Begam's suit without coming to any

finding whether or not the property was really the property of the plaintiff, or on any other issue arising in the case. Section 85 of the Transfer of Property Act provides that in a mortgage suit, all persons having an interest in the property comprised in the mortgage must be made parties. In the present suit, no doubt, Khairati knew that Banni Begam claimed the property. Her claim, however, was adverse to both mortgagor and mortgagee. Khairati could not admit her claim. To do so would be fatal to his mortgage and the suit on foot thereof.

2. In the case of Jaggeswar Dutt v. Bhuban Mohan Mitra (1906) I.L.R. 33 Calc. 425 it was held that adverse claimants ought not to be made parties to a mortgage suit for the purpose of litigating their titles, and that the only proper parties to such a suit are persons interested in the equity of redemption. In a carefully considered judgment, Mookerjee, J., gives many cogent reasons for such a proposition. In the present appeal it is unnecessary for me to decide that Khairati's suit would have been bad had he joined Banni Begam as a party, but the Courts below have held that his suit was bad because he did not join her as a defendant,

3. I certainly agree with the learned Judges who decided the case I have cited that as a general rule it would be highly inconvenient to allow adverse titles paramount to that of the mortgagor and mortgagee to be litigated in a mortgage suit. To do so would cause the greatest confusion. Section 45 of the Code of Civil Procedure provides that when causes of action are joined which the Court considers cannot be conveniently tried or disposed of together it may order separate trials or any other order that may be necessary or expedient. Possibly this enactment is sufficient and a suit is not actually bad because an adverse claimant is made a party. I am, however, clearly of opinion that the suit of Khairati on his mortgage was not bad because he did not make Banni Begam a defendant, and this is the only matter necessary for decision in the present appeal. No one appears on behalf of the respondent.

4. I allow the appeal, set aside the decrees of both the Courts below and remand the case under Section 562 of the Code of Civil Procedure to the Court of first instance through the lower appellate Court with directions to readmit the suit under its original number in the register and dispose of it according to law. The costs will

be dealt with by the Court finally disposing of the case.

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