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Court : Allahabad

Decided On : Apr-11-1910

Reported in : 7Ind.Cas.570

Judge : Griffin, J.

Appellant : Paras Ram and ors.

Respondent : Lalman

Judgement :

Griffin, J.

1. This appeal arises out of a suit for redemption of a mortgage executed in the year 1848 by two persons named Rati and Lila in favour of one Madho Ram. The mortgage was one with possession. In the year 1884 Madho Ram, it is said, executed a simple mortgage of the property treating it as his own property in favour of one Kashi Ram whose rights subsequently devolved upon one Basant Lal by assignment. In the year 1900 Basant Lal sued upon the mortgage of 1884 and brought the property to sale as that of Madho Ram. The property was purchased at the auction sale by Ram Prasad and others defendants-appellants in this Court. Basant Lal also acquired certain shares from the representatives of the original mortgagors of 1848, and those shares he transferred to the present plaintiff, who has also himself acquired certain other shares from other representatives of the original mortgagors. The main defence to the suit was that

the plaintiff is now estopped from treating the property as mortgaged property inasmuch as Basant Lal, his transferor, had already dealt with the property as the property of Madho Ram. A further plea was taken that the suit was barred by reason of the provisions of Article 134 Schedule II of the Indian Limitation Act. It was also pleaded that Madho Ram and his successors had full proprietary title by adverse possession or otherwise over the property in suit. Among the defendants are the successors-in-title of Madho Ram. Two issues were framed by the Court of first instance. The first dealt with a plea taken by the defendants as to the validity of the sale-deeds under which the plaintiff claimed to have acquired the rights of the original mortgagors. The second was whether the defendant had been in adverse proprietary possession of the property in suit for more than 12 years. The Court of first instance found that the sale-deeds in plaintiff's favour were fictitious and further that the suit was barred by reason of the provision of Article 131 of the Limitation Act. The learned Munsif held that the defendants were bona fide auction purchasers. On appeal by the plaintiff the lower appellate Court held that the sales in plaintiff's favour were genuine, and that the suit was not barred either by reason of the provisions of Section 115 of the Evidence Act (Estoppel), or by reason of the provisions of Article 131 of the Limitation Act. The learned Subordinate Judge, therefore, decreed the appeal and the suit. The grounds taken in second appeal are

(1) that the suit is barred by estoppel,

(2) that it is barred by reason of the provisions of Article 134 of the Limitation Act, and

(3) that the Court below has omitted to frame an issue and to decide whether Madho Ram had acquired any proprietary title in the property in suit. On the question of estoppel, the act or declaration, which, in this case, is alleged, on behalf of the appellants, to constitute estoppel, is the fact that in the year 1900 Basant Lal in execution of the decrees against Madho Ram put up the property to sale as Madho Rani's own property, and it is alleged on behalf of the auction-purchasers appellants that they relying on this representation purchased the property. To this argument the reply is that a purchaser at an auction sale obtains

no guarantee of title, and further that the plaintiff does not represent Basant Lal alone, but he also represents some of the original mortgagors. It is not contended that as against them any action of Basant Lal would operate as estoppel, and as the plaintiff represents those particular mortgagors, it is difficult to see why Basant Lal's action should prejudice him either.

2. On the question as to whether Article 134 of the Limitation Act applies or not, the weight of authority appears to be against the appellants. The learned Vakil on behalf of the respondent, while contending that Article 134 does not apply to the circumstances of this case, does not put his argument on the same ground as that relied on in the Court below. The learned Subordinate Judge is of opinion that the purchaser would have to show 12 years' possession before he could obtain the benefit of this article. The limit action provided by Article 134 is 12 year from the date of the transfer by a mortgagee or trustee. In this case the transfer was made in 1883, so that limitation would begin to run from that year and not as the Court below appears to assume from 1901 when the auction purchaser obtained possession. The instrument of 1884 is not on the record. We are at a loss to know what are its exact terms. We do not know whether in that document Madho Ram professed to hold the property as his own property, or whether what he transferred were merely his mortgagee rights. The auction-purchaser did not acquire the property from the original mortgagee, but purchased it in execution of a decree obtained against the original mortgagee by Basant Lal, the representative-in-interest of the mortgagee of 1814. In *Sheo Nath Singh v. Mahipal Singh A.W.N. (1903) 50* it was held that Article 134 does not apply to cases of forced sales in execution of decrees. The same view was taken by a Full Bench of the Madras High Court in *Ahmed Kutti v. Raman Nambudri 25. M. 99 : 11 M.L.J. 323*. Following these rulings, I must hold that the suit was not barred by reason of the provisions of Article 134 Schedule II of the Limitation Act.

3. As to the third ground, namely, that the appellants were not given an opportunity of proving Madho Ram's title, it appears to me that the second, issue framed by the Court below was sufficiently wide to cover the plea which is now raised in this Court. If there had been evidence as to Madho Ram's acquisition of a perfect title to the property in suit, there is no doubt that it would have been produced as a

complete answer to the suit. The appeal fails and is dismissed with costs, including in this Court fees on the higher scale.

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