

Balmakund and ors. Vs. Dharma and ors.

Balmakund and ors. Vs. Dharma and ors.

SooperKanoon Citation : sooperkanoon.com/454696

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1896)ILR18All458

Judge : Banerji, J.

Appellant : Balmakund and ors.

Respondent : Dharma and ors.

Judgement :

Banerji, J.

1. The suit out of which this appeal has arisen was brought for the redemption of a mortgage, which was alleged by the defendants to have been made more than one hundred years before the date of the suit. The averment of the defendants as to the date of the mortgage was not repudiated by the plaintiffs. The mortgage having thus been made more than sixty year before suit, the claim for redemption would be barred by limitation under Article 148 of Schedule II of Act No. XV of 1877, unless it could be shown that an acknowledgment of the mortgagor's right had been made before the expiry of the period of limitation in the manner required by law. What happened in this cases, as found by the learned Judge below, was that at the time of the revision of settlement the title of the mortgagor was acknowledged by Udai Ram and Khushhali, the two mortgagees, but the settlement khewat was signed by-Only one of them. This, it is alleged, took place

in 1852. Had the mortgage been only in favour of the person who signed the khewat, there can be no doubt that an acknowledgment by him of the title of the mortgagor would have given the mortgagor a fresh start for the computation of limitation. Before Act No. XIV of 1859 came into operation there was no limitation for a suit for redemption. It was under Clause 15 of Section 1 of that Act that a limitation of sixty years was for the first time provided for such a suit, to be computed from the date of the mortgage, unless an acknowledgment of the title of the mortgagor, or of his right of redemption, had been given in writing signed by the mortgagee, or some person claiming through him, in which case limitation would run from the date of acknowledgment. Act No. XIV of 1859 applied to the mortgage in question, and, as the said mortgage was more than sixty years old when that Act came into operation, a claim to redeem the mortgage would have been barred by limitation, had no acknowledgment of the mortgagor's title been made by the mortgagees and signed by them. In this case only one mortgagee signed the acknowledgment, and therefore the acknowledgment could not avail against the mortgagee who had not signed it, and the mortgagor's right of redemption was not saved as against that mortgagee. The mortgage was made in favour of two mortgagees jointly, and it was not a mortgage in which the interests of each mortgagee could be apportioned so as to allow of the mortgage being redeemed piecemeal. In the case of such a mortgage an acknowledgment by one only of the mortgagees could not be effectual for the purpose of saving the operation of limitation. This view is in accord with the ruling of the Bombay High Court in *Bhogilal v. Amritlal* I.L.R. 17 Bom. 173. The plaintiff's claim was therefore barred by limitation and was properly dismissed by the Court of First Instance. I allow the appeal with costs, and, setting aside the decree of the Court below with costs, restore that of the Court of First Instance.