

Dharajit and ors. Vs. Siria and ors.

Dharajit and ors. Vs. Siria and ors.

SooperKanoon Citation : sooperkanoon.com/455396

Court : Allahabad

Decided On : Feb-08-1911

Reported in : 9Ind.Cas.484

Judge : John Stanley, C.J. and ;Banerji, J.

Appellant : Dharajit and ors.

Respondent : Siria and ors.

Judgement :

1. The plaintiffs in the suit out of which this appeal has arisen sued to recover the amount alleged to be due to them on foot of a mortgage of the 25th of September 1896. This mortgage was executed by four brothers including Jewa Ram, who has since died. The defendants to the suit are the executants of the bond and the representatives of Jewa Ram. It is found by the Courts below that the mortgage in question was executed to raise money to pay off prior debts of the ancestor of the executants. The Court below gave a decree to the plaintiffs as against the three surviving brothers but exempted the representatives of Jewa Ram. The learned District Judge in affirming the decision of the Courts below observe that the plaintiffs had to prove that the debt to pay off which, the mortgage was executed was incurred by the ancestor as bona fide debt for a legal necessity.' In this statement of the law we are unable to concur with the learned District Judge. All that the plaintiffs were bound to establish was that there was an antecedent debt of the ancestor existing at the date of the execution of the mortgage. This has

been proved.

2. The burden did not lie upon the plaintiffs of showing what the nature of that antecedent debt was, it not being suggested that this debt was contracted for immoral purposes or was otherwise illegal. There is no allegation here that the debt of the ancestor was contracted for any such purposes. Under these circumstances we must allow the appeal, we modify the decree of the Court below and decree the claim as against all the defendants, including defendants Nos. 5-10, to be realised out of all the mortgaged property. The defendants must pay the costs in all Courts. We extend the time for payment for six months from this date. In other respects we affirm the decision of the Court below.

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