Ram Kumar Lal and anr. Vs. Ram Charittar Lal and anr.

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SooperKanoon Citation : sooperkanoon.com/460876

Court : Allahabad

Decided On : Aug-11-1939

Reported in : AIR1939All725

Appellant : Ram Kumar Lal and anr.

Respondent : Ram Charittar Lal and anr.

Judgement :

Bennet, J.

1. This is a second appeal by the defendants against a decree of the lower Appellate Court in favour of the plaintiffs granting the plaintiffs an injunction. The facts are simple. There was a house in the District of Azamgarh which the Collector of Azamgarh sold for arrears of land revenue due from Ram Govind Lal and the house was sold as the house of Ram Gobind Lal. The plaintiffs claim that they are separate from Ram Govind Lal and that the house is their property and that they have an enemy, defendant 3, Ram Naresh Lal Mukhtar, and that he by his fraud got this house sold for the arrears of land revenue and that he supplied the money to the purchaser to buy the house and got the house eventually transferred to his brother Rarn Kumar Lal. The trial Court dismissed the suit. The plaintiffs appealed and the lower Appellate Court held that the plaintiffs had proved that the entire proceedings from attachment to sale were fraudulent and that the house belonged to the plaintiffs and that there was no bar in law to the suit. In

second appeal It is claimed that there was a bar in law arising from the Land Revenue Act (Act 3 of 1901), Section 233(1) and (m). These Sections provide:

No person shall institute any suit or other proceeding in the Civil Court with respect to any of the following matters : (1) claims to set aside a Kale for arrears of revenue, excepts on the ground of fraud, under Section 175(m) claims connected with, or arising out of the collection of revenue (other than claims under Section 183), or any process enforced on account of an arrear of revenue, or on account of any sum which is by this or any other Act realizable as revenue.

2. It is clear that the provisions of the exception in Sub-section (1) apply to the present case as this was a claim to set aside a sale for arrears of revenue on the ground of fraud and it has been held that fraud has been proved. Sub-section (m) does not apply to the present case as it does not deal with a suit to set aside a sale for arrears of revenue. It does deal with claims from collection of revenue, but clearly Sub-section (m) is not intended to embrace the special case in Sub-section (1). Turning to Section 175, it provides as follows:

If no application under Section 173 is made within the time allowed therefor, all claims on the ground of irregularity or mistake in publishing or conducting the sale shall be barred. Nothing herein contained shall bar the institution of a suit in the Civil Court for the purpose of setting aside a sale on the ground of fraud.

3. There is therefore in Section 175 a clear provision that a suit like the present is not barred. No ruling has been shown in which it was held that the Land Revenue Act would bar a suit in the Civil Court to set aside a sale for arrears of land revenue which was found to be fraudulent. For these reasons we dismiss this second appeal with costs.