

Har Narayan Vs. Sheo Prasad

Har Narayan Vs. Sheo Prasad

SooperKanoon Citation : sooperkanoon.com/461022

Court : Allahabad

Decided On : Dec-13-1912

Reported in : 18Ind.Cas.95

Judge : Chamier, J.

Appellant : Har Narayan

Respondent : Sheo Prasad

Judgement :

Chamier, J.

1. The respondent in his plaint claimed redemption of mortgage made on May 11th, 1849 to secure a sum of Rs. 22-8. The respondent is the purchaser of the right to redeem from the heirs of the original mortgagors. The defendant-appellant purchased the property sought to be redeemed by a deed dated October 13, 1906, in which his vendors stated that the property was held by them as mortgagees under a mortgage of June 11, 1849, made to secure the payment of a sum of Rs. 26. The Courts below have accepted the statement in the deed of October 13, 1906 as an acknowledgment within the meaning of Section 19 of the Limitation Act. They have found that the true date of the mortgage is May 11th, 1849, and the first point taken on behalf of the appellant is that the statement in the deed that the property is subject to a mortgage of June 11, 1849, cannot be treated as evidence of an acknowledgment regarding a mortgage of May 11, 1849. This

question arose and was decided in *Dip Singh v. Girand Singh* 26 A. 313; 1 A.L.J. 1; A.W.N. (1904) 38. It was held that such an acknowledgment should be treated as an acknowledgment that at the time when it was made the mortgage was a subsisting mortgage whatever its date might be, for there was a clear and express acknowledgment that the person who made the statement was in possession of the property as mortgagee. I must hold, therefore, that the statement relied upon in the present case cannot be ruled out merely because the date of the mortgage given in the statement is not correct. The second point taken is that the statement in question is not admissible as an acknowledgment under Section 19 of the Limitation Act because it was not addressed to the person who was entitled to redeem the mortgage. The learned Vakil for the appellant relies upon the decision of Maclean and Mukerji, JJ., in *Imam Ali v. Baj Nath Ram Sahu* 33 C. 613; 10 C.W.N. 559; 3 C.L.J. 576. In that case, Mukerji, J., delivering the judgment of the Court, relied upon some remarks made by Sir Barnes Peacock in the case of *Mylapore v. Yeo Kay* 14 C.801; I.A. 168 as authority for the proposition that the admission contemplated by Section 19 is an admission of liability made to the plaintiff or to a person through whom the plaintiff claimed. Sir Barnes Peacock, referring to a statement which was relied upon as an admission, says: 'He does not admit that he was liable to be turned out of possession, or that any one had a right of possession, as against him nor does he make any admission at all to the plaintiff or to any one through whom he claims. Under those circumstances, the clause does not apply.' In that case, it was not necessary for their Lordships to decide whether an admission, in order to come within Section 19, must be an admission of liability made to the person entitled to the property or right. But in a later case, *Mani Ram Seth v. Seth Rup Chand* 33 C. 1047 their Lordships had to decide this very question. The statement in question in the later case had been made by a defendant in a petition presented by him to the Court, in a proceeding to which the plaintiff was no party. Their Lordships, after considering the various requisites of a valid admission under Section 19 of the Limitation Act, say: 'The acknowledgment is not addressed to the person entitled, but according to the explanation' given in Section 19, this is not necessary. We have, therefore, the bare question of whether an acknowledgment of liability, if the balance on investigation should turn out to be against the person making the

acknowledgment, is sufficient;' and then their Lordships go on to hold that the acknowledgment there in question was sufficient. This decision appears to me to conclude the matter. The result, therefore, is that this appeal fails and is dismissed with costs.

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