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Bala Proshad Vs. Partab Singh

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Court : Allahabad

Decided On : Nov-10-1911

Reported in : 13Ind.Cas.38

Judge : Karamat Husain and ;Chamier, JJ.

Appellant : Bala Proshad

Respondent : Partab Singh

Judgement :

1. This was a suit for sale upon a mortgage bond. The Court of first instance found that the defendant's sons should have been impleaded, and that as they were not impleaded within time, the suit must be dismissed. There was an appeal to the lower Appellate Court which agreed with the first Court in dismissing the suit. The plaintiff comes here in second appeal. In our opinion the Courts below were wrong in the view they took. The sons of the defendant should have been made parties at the instance of the Court and then the suit should have been tried against them as well as against their father. Even if the Courts below had come to the conclusion that the suit against the sons was barred by time, they could probably have given some sort of decree against the mortgagor alone if the claim against him was not barred by time. We, therefore, set aside the decrees of the Courts below and remand the case to the Court of first instance through the lower Appellate Court for re-admission and disposal according to law in the light of the observations we have made. Costs will abide the event.

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