

Tula Ram Vs. Bhup Singh

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Court : Allahabad

Decided On : May-08-1925

Reported in : AIR1925All691

Appellant : Tula Ram

Respondent : Bhup Singh

Judgement :

Sulaiman, J.

1. This is a judgments-debtor's appeal arising out of an application for a decree absolute in which the main plea is that the application is barred by time. It is surprising to find that both the Courts below call the proceeding an execution of the decree which of course it is not. It appears that the plaintiff instituted a suit for sale on the basis of a mortgage-deed executed by Tula Ram, the appellant himself, impleading his sons, Jugal Kishore and Ratan Lal. A preliminary decree for sale was passed on the 16th of April, 1918 against all the three defendants and the time fixed for payment was the 17th of October, 1918. The sons had contested the suit on the ground that there was no legal necessity for borrowing the amount. They had preferred an appeal to the District Judge in July, 1918, which was dismissed on the 2nd of November, 1918, and a second appeal to the High Court by them was also dismissed on the 31st of March, 1921. It is to be noted that neither in their appeal before the District Judge nor in their appeal to the High

Court did the sons implead their father, Tula Ram, but they opened up the whole decree and urged that no portion of the joint family property was at all liable to be sold.

2. The decree-holder claims that he is entitled to calculate the time for making the application for the final decree from the date of the appellate Court's decree. If time is to be counted from that date, the application is within time. If not, then it was presented more than three years after the preliminary decree by the first Court was prepared. The Court below has held that in this case the application is not barred by time and has relied on the Full Bench case of Gajadhar Singh v. Kishen Jiwan Lal (1917) 39 All. 641.

3. The present case is different from cases where a number of defendants who hold portions of property independently and who were parties to the original suit are not made parties in appeal. In the present case the appeal had been preferred by the sons on behalf of and in the interest of the whole family. The point raised was that the entire family property was to be exempted from the decree. The success of the appeal would have enured for the benefit of the whole family including Tula Ram, the executant. It must, therefore, be assumed that the appeal was preferred on behalf of the whole family, but of course in the name of the sons only, who were not disqualified from challenging the validity of the loan advanced. The whole case was re-opened and the appellate Court, if it had allowed the appeal, would have had to dismiss the entire suit not only as against the sons but even as against Tula Ram. Under these circumstances the view taken by the learned Subordinate Judge that it was the decree passed in appeal in which the first Court's decree merged, and from which date time would be counted seems to be correct. We accordingly dismiss the appeal but without any order as to costs as no one appears for the respondent.