

Binda Prasad Vs. Raja Ram

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Court : Allahabad

Decided On : Mar-09-1931

Reported in : AIR1932All43

Appellant : Binda Prasad

Respondent : Raja Ram

Judgement :

Mukerji, J.

1. The facts of the case are a little complicated, and to appreciate the result they have to be correctly understood.
2. Defendant 3, Nijabat Ali Khan, sold his property in village Chak Sakaria to defendant 4, Ahmad Khan, on 27th January 1920.
3. Ahmad Khan had not got the entire purchase money to pay to Nijabat Ali Khan, and therefore he secured the balance of the purchase money, namely Rs. 710, by executing a simple mortgage of Ghak Sakaria in favour of Nijabat Ali Khan. Defendant 5, Parshotam Das, held a promissory note against Nijabat Ali Khan. Parshotam Das instituted a suit, No. 189 of 1920, against Nijabat Ali Khan for recovery of the money due on the promissory note, and he obtained an order of temporary injunction restraining Nijabat Ali Khan from recovering the sum of Rs. 710 secured by mortgage in his favour from Ahmad Khan. We are told that a

temporary injunction was also issued against Ahmad Khan restraining him from making payment to Nijabat Ali Khan, but we are not quite certain that this is true. Ahmad Khan was not a party to the suit on the promissory note, and therefore no temporary injunction could have been issued against him. In spite of the issue of the temporary injunction Nijabat Ali Khan sold his mortgagee rights to defendant 2, Ganga Paraad, on 22nd October 1920. Ganga Parsad instituted a suit for recovery of the mortgage money against Ahmad Khan and Nijabat Ali Khan and his suit was numbered as 41 of 1921. A preliminary decree was made in favour of Ganga Paraad on 9th March 1921.

3. Parshotam Das thereupon brought the suit, No 146 of 1921, against Ahmad Khan, Nijabat Ali Khan and Ganga Parsad to obtain a declaration that the transfer of the mortgagee rights by Nijabat Ali Khan in favour of Ganga Parsad and the decree made in favour of Ganga Parsad were fraudulent transactions and were not binding on Parshotam Das. This suit was dismissed by the Court of first instance on 11th July 1921.

4. Parshotam Das filed an appeal which was numbered aa 520 of 1921.

5. Pending this appeal, No. 520 of 1921, several things happened. Binda Parsad, defendant 1, purchased Ganga Parsad's decree. Then he obtained a final decree for sale. Ahmad Khan sold his rights in the property (Chak Sakaria) to the Nawab of Rampur, who is represented on the present record by defendant 6, Nand Lal Saran. As Binda Parsad wanted to execute the decree the Nawab of Rampur deposited the whole of the decretal amount in favour of Binda Parsad on 10th May 1923.

6. About a month later, on 30th June 1923, Parshotam Das appeal No. 520 of 1921, was successful, with the result that he (Parshotam Das) obtained a declaration that the decree obtained by Ganga Parsad was not binding on Parshotam Das. Parshotam Das executed his decree for money and brought the mortgagee rights held by Nijabat Ali Khan under the mortgage of 27th January 1920 to sale. The sale took place on 30th October 1923, and Raja Earn, the plaintiff in the present proceeding, was declared to be the purchaser.

7. Before this purchase on 20th August 1923 Binda Parsad had withdrawn the mortgage money deposited by the Nawab of Rampur in Court.
8. Having purchased the mortgagee rights, Raja Earn instituted the suit out of which this appeal has arisen for recovery of the money which had been taken out of Court by Binda Prasad.
9. The Court of first instance dismissed the suit, but the learned Judge of the appellate Court has decreed it against Binda Parsad. Binda Parsad now appeals.
10. The learned appellate Judge has allowed Raja Ram to obtain only a portion of the money deposited in favour of Binda Parsad by the Nawab of Rampur and Raja Ram has filed a cross-objection claiming that a larger amount of interest should have been allowed to him.
11. In the appeal it is contended on behalf Binda Parsad that there is no privity of contract or any privity of estate between the plaintiff and himself (Binda Parsad) and therefore the respondent is not entitled to the decree that has been granted to him by the lower appellate Court.
12. We think this contention is sound and must be given effect to. In the course of the argument it was conceded by the learned Counsel for the respondent that it would be open to Raja Ram to enforce' the mortgage of 17th January 1920 and to bring the property (Ghak Sakaria) to sale in order to realize the amount secured on the mortgage in favour of Nijabat Ali Khan. This is certainly correct and Raja Ram is entitled to enforce the mortgage. If that be so, namely if the mortgage still subsists, it cannot be said that the money deposited by the Nawab of Rampur on 10th May 1923 took the place of the mortgaged property and it is a case of 'transferred security.' Raja Rani is the purchaser in execution of Parshotam Das' decree and Parshotam Das obtained the declaration that the preliminary decree of mortgage obtained by Ganga Parsad was a fraudulent transaction so far as Parshotam Das was concerned. If that is so the man who purchased in execution of Parshotam Das' decree cannot take advantage of the very decree which was impeached by Parshotam Das. He cannot, to quote a homely phrase, 'blow both hot and cold with the same mouth.' Raja Earn says-that the decree in favour of

Ganga Parsad and therefore in favour of Binda Parsad is bad, and yet he says that he would take the money that was deposited in favour of Binda Parsad in payment of that decree.

13. The learned Subordinate.. Judge has] talked about equity, but equity does not mean a short cut to a result found desirable. The rules of equity are well-known, and have to be applied under the rules laid down and not arbitrarily.

14. We are of opinion that the claim against Binda Parsad is misconceived, and there was really no cause of action for the claim against him. In this view the decree of the Court of first instance must be restored, and we modify the decree of the Court below and restore the decree of the Court of first instance, dismissing the suit. The respondent will pay the costs of Binda Prasad throughout the litigation including costs in this Court on the higher scale.

15. The cross-objection naturally fails and it is also dismissed with costs,

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