

Rajaram Dhar Dube and ors. Vs. Jadunandan Dhar Dube and ors.

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SooperKanoon Citation : sooperkanoon.com/463561

Court : Allahabad

Decided On : Jan-19-1925

Reported in : AIR1925All758

Appellant : Rajaram Dhar Dube and ors.

Respondent : Jadunandan Dhar Dube and ors.

Judgement :

Sulaiman, J.

1. This is a defendants' appeal arising out of a suit for redemption.

2. It appears that Sribhukhan and Mt. Bahorna, the widow of his uncle Tanku made a mortgage of certain ex-proprietary tenancies in favour of the defendants. Raghubir, the brother of Tanku, was no party to that mortgage. The defendants-obtained possession of the entire tenancies from their mortgagors Sribhukhan and Mt. Bahorna. The plaintiffs are the sons of Sribhukhan. The defence raised by the mortgagees was that Eaghbir, the brother of Tanku, also had an interest. which he subsequently relinquished in favour of the zamindar, whose interest, has devolved on the mortgagees; and they further urged that Mt. Bahorna died, childless, and her interest in the holdings also lapsed to the zamindar. The lower Appellate Court has not allowed them to raise any such pleas. I am of opinion that the lower Appellate Court was right. It is not open to the mortgagees to say that at the time when the mortgage was made anyone other than Sribhukhan and Mt.

Bahorna had also an interest in the mortgaged property. They are estopped from setting up the interest of a third party. They cannot do so so long as they, have not handed over possession to the representatives of their mortgagors. It, therefore, must be assumed in this case that for some reason or other Raghubir had no longer any interest left at the time when the mortgage was made and that the two persons, Sribhukhan and Mt. Bahorna only were jointly entitled to make the mortgage in favour of the defendants.

3. The other plea that the interest of Mt. Bahorna has lapsed to the zamindar is also without any force. In case of joint tenancies, if a joint tenant dies with out any heir-at-law, her interest survives to the surviving joint tenant. The surviving joint tenant does not lose his right in half the tenancy. Holdings cannot be divided in that way. The death, therefore, of a joint tenant without heirs does not in any way benefit the zamindar; but the surviving tenant still remains a tenant of the whole holdings. That is a well-recognized principle underlying joint tenancies. The plaintiffs, therefore, as the representatives of Sribhukhan, were, when the other co-mortgagor died childless, entitled to redeem the entire mortgaged property on payment of the entire sum.

4. The appeal is without any force and is dismissed under Order 41, Rule 11, Civil P.C.