

Jagannath Vs. Dibbo and ors.

Jagannath Vs. Dibbo and ors.

SooperKanoon Citation : sooperkanoon.com/464220

Court : Allahabad

Decided On : Dec-01-1908

Reported in : 1Ind.Cas.818

Judge : Richards and ;Griffin, JJ.

Appellant : Jagannath

Respondent : Dibbo and ors.

Judgement :

1. This was a suit to enforce a mortgage, dated the 6th of September, 1884. The defence was that the mortgage was without consideration, that the mortgagors had no power to mortgage the property and that the suit was barred by limitation. The admitted facts are that at the date of the mortgage one Musammat Shibbo was in possession as a Hindu widow, having succeeded her husband, one Bholu, who died childless. A number of transfers have since been made. Some of the defendants are the transferees of Musammat Shibbo and some are transferees of Tota Ram and Har Sukh, the mortgagors named in the mortgage deed. The mortgage deed bears interest at the rate of 37 1/2 per cent. per annum. Musammat Shibbo died on the 5th of October, 1888, and no proceedings were taken until the institution of the present suit on the 18th of January, 1906. The Court below has found that the deed was fictitious and that no consideration passed. The mortgage deed was registered, and it appears from the endorsement of the Registrar that the mortgagors appeared before him, acknowledged the

deed, and admitted receipt of the mortgage money. The money was not paid before the Sub-Registrar, and Jagannath, the mortgagee, produces no receipt. The defendants' witnesses depose that Tota Ram and Har Sukh were very poor persons and that they entered into an arrangement with Jagannath, that Jagannath should carry on litigation for them, and in the event of its being successful, the property was to be shared, and that as part of this arrangement the mortgage in suit was executed that the Rs. 2,000 were never paid, and that Jagannath did not carry on the litigation. That there was litigation going on at that time is very clear, and the nature of the litigation appears. It was a suit by Har Sukh and Tota Ram to set aside alienations made by Musammat Shibbo on the ground that she as Hindu widow had no right to alienate the property she had succeeded to as widow of Bhola. It further appears that Shibbo was entered as the owner at this very time in the public khewat. We see no reason to differ from the finding of the learned Subordinate Judge that there was no consideration for the mortgage. Jagannath, years ago, instituted a suit on another bond, executed by Har Sukh in his favour without any mention of the present bond though the latter was for a much larger amount. It has been held by the Privy, Council in the case of Sham Sundar Lal v. Achhan Kunwar L.R. 25 I A. 113; 21 A. 71 that it is not competent for a Hindu reversioner to transfer his reversionary interest expectant on the death of a Hindu widow. See also the case of Nund Kishore Lal v. Kanee Ram Tewary 29 C. 355. It is, however, contended on behalf of the plaintiff that he can call to his aid the provisions of Section 43 of the Transfer of Property Act, 1882, which provides that 'where a person erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.' This section of course cannot apply if the deed was really without consideration, but even if there was some consideration for the deed, it would be necessary for the plaintiff to show that there was an erroneous representation by Har Sukh and Tota Ram that they were in possession of the property at the date of the mortgage. Jagannath when examined did not attempt to show that he did not know, that Musammat Shibbo was in possession as a Hindu widow, or that there was any representation to him which

made him think that Har Sukh and Tota Ram were in possession of the estate. On the other hand, he says that he was told that money was wanted for litigation, and we know from the evidence on the record that the nature of this litigation was to set aside alienations by Musammat Shibbo, and that Musammat Shibbo was alive and was a party to the litigation. Both these grounds are fatal to the plaintiff's case. We accordingly dismiss the appeal with costs.

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