

Ram Narain and anr. Vs. Muhammad Akbar

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Court : Allahabad

Decided On : Nov-24-1921

Reported in : 79Ind.Cas.508

Judge : Grimwood Mears, C.J. and; Banerji, J.

Appellant : Ram Narain and anr.

Respondent : Muhammad Akbar

Judgement :

1. The question which arises in this appeal is whether the mortgage made in favour of the defendant by the predecessor-in-title of the plaintiff in 1894 included certain tanks and a well for the manufacture of indigo. The suit was brought for redemption of the mortgage, and the plaintiff claimed not only the land mortgaged but also the tanks and the well which existed on the land. The mortgagees had no objection to redemption of the land, but they contended that the well and the tanks were not included in the mortgage, that they had been sold previous to the mortgage to the defendants, and that they formed no part of the mortgaged property which could be redeemed.

2. The Court of first instance found against the defendants and decreed the whole claim.

3. Upon appeal the learned Judge found that the sale-deeds relating to the tanks and the well executed by the mortgagor were genuine sale-deeds, and that the

ownership of the mortgagor? had passed to the mortgagees by virtue of those sales. He was further of opinion that the well and the tanks were not included in the mortgage and could not have been included in it by the mortgagor who had already sold them to the mortgagee. He accordingly disallowed that part of the claim which related to the tanks and the well. The tanks we may mention were for the manufacture of indigo and the well has been found to have been used for the same purpose.

4. A learned Judge of this Court on appeal set aside the decree of the lower Appellate Court on the ground that the mortgagor was in law incompetent to sell the tanks and the well to the mortgagee.

5. This view of the learned Judge does not commend itself to us. It is conceded that, if there had been a building belonging to the mortgagor on the land, he could sell it. If he could sell a building he could equally sell tanks and the well constructed by him on the land. What he was incompetent to sell was his holding. The tanks and the well could not be deemed to be a part of the holding. Furthermore, it did not lie, in the mortgagor, who had sold the tank and the well, and subsequently mortgaged the land, to say that he had no power to sell, and that, therefore, the purchasers had acquired no title to the tanks and the well. The plaintiff derived his title from the mortgagors and he is equally incompetent to set up such a plea. As has been stated above, what the mortgagors did was not to sell their occupancy holding but something apart from their occupancy holding. Therefore, the sales effected were valia sales and could take effect. It appears that a sale-deed was executed on the very day on which the mortgage-deed was executed. Surely, it cannot be said that the parties to the sale-deed intended to include in the mortgage the property which had shortly before been sold. It is equally clear that the property sold some years before was not intended to be mortgaged to the mortgagee.

6. In view of the findings of the lower Appellate Court which this Court was bound to accept, and in view of the fact that we are unable to agree with the learned Judge's opinion as to the invalidity of the sale executed by the mortgagor, we must allow the appeal. We accordingly set aside the decree of this Court and restore

that of the lower Appellate Court with costs of both hearings in this Court including fees on the higher scale.

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