

Arbindakeb Rai Vs. Jageshar Rai and ors.

Arbindakeb Rai Vs. Jageshar Rai and ors.

SooperKanoon Citation : sooperkanoon.com/470883

Court : Allahabad

Decided On : May-06-1919

Reported in : AIR1919All242; 51Ind.Cas.829

Judge : Walsh and ;Stuart, JJ.

Appellant : Arbindakeb Rai

Respondent : Jageshar Rai and ors.

Judgement :

Walsh, J.

1. We think this appeal must be dismissed. We do not think that it is necessary to discuss all the authorities which have been mentioned in the judgment of the Court below and in the argument before us. We do not mean by this that the argument has exceeded in the least the limits of what was reasonable having regard to the difficulty of the point raised, but we think the difficulty of the point raised has been largely accentuated by a tendency on the part of some Judges to travel a little beyond the actual province within which they are called upon to determine the question. The real question we have to determine in this suit is whether the acknowledgment relied upon by the plaintiff as extending the period of limitation was given within the meaning of Section 19 of the Limitation Act, that is to say, was it given by some person through whom the defendant derives title or liability? We have come to the conclusion that it is impossible to say that it is not, and that it

is impossible to take it out of the plain language of the section. It is really immaterial to consider the various equitable considerations which bear upon the interpretation. We really have no alternative but to reiterate the language of the section. The Calcutta High Court, although it is perfectly true that their decision under Section 20 was sufficient to justify the allowing of the appeal, nevertheless took the same view that we now take of the language of Section 19.

2. Mr. Peary Lal has pressed upon us a distinction between that case and the present in this respect, that in that case the acknowledgment was antecedent to the transaction by which the defendant derived title from the mortgagor. We think this makes no difference in the interpretation of the Statute. The real question is, not when was the acknowledgment given nor when did the transaction of transfer take place, but was the acknowledgment really a genuine acknowledgment as and when it was given? A suppositious case is put forward: A mortgagor, after getting rid of all his interest, has given a friendly or collusive acknowledgment to the mortgagee so as to extend the mortgagee's remedies against the third party when the mortgagor had no further interest in the subject-matter. In my judgment the answer is this, that the word 'acknowledgment' in the section must mean a lawful acknowledgment given by a person able to bind himself by the acknowledgment as and when it is given. In these circumstances the case must go back for trial upon the merits. The appeal is dismissed with costs, including in this Court fees on the higher scale.

3. I should like to add that it is, in my opinion, very unfortunate. I have said over and over again in order to draw the attention of the trial Courts to it--that after all the evidence is taken on the issues and the case argued and ready for judgment, the learned Judge when he sits down to write the judgment should decide the case upon a preliminary point. If he turns out wrong, it involves three years' delay and a great deal of unnecessary expenditure. It may be that the determination of the other issues renders the decision of this point totally superfluous. It is better and far cheaper in the interests of the parties themselves that when an appeal is brought against the decision of a preliminary point, the Appellate Court should have all the findings before it and be in a position to give a final decision on the case.

Stuart, J.

4. I concur in the order proposed.

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