

Halka Vs. Nannhon

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Court : Allahabad

Decided On : Mar-16-1931

Reported in : AIR1932All259; 140Ind.Cas.42

Appellant : Halka

Respondent : Nannhon

Judgement :

Sulaiman, Ag. C.J.

1. This is a plaintiff's appeal arising out of a suit for possession. According to the plaint a mortgage had been made by the plaintiff's father in 1899 for a sum of Rs. 199 and the defendants' predecessor was put in possession of the mortgaged property which consisted of occupancy holdings. The plaintiff offered to pay the amount due on the mortgage and sought recovery of possession. There were several defendants to the suit. Defendant 1 did not admit the title of the plaintiff or the existence of any mortgage at all. Other defendants admitted the plaintiff's title, but pleaded that the mortgage deed alleged by the plaintiff not having been registered the plaintiff could not claim any right under it and was not entitled to recover the property. Both the Courts below overruled the pleas raised by the defendants and decreed the claim on payment of the amount admitted by the plaintiff.

2. The lower appellate Court held that the mortgage deed being unregistered was admissible for the purpose of proving the nature of the defendants' possession. On appeal to this High Court a learned Judge of this Court allowed the appeal and dismissed the plaintiff's suit. He came to the conclusion that in view of the provisions of Sections 17 and 49, Registration Act, the document in question was inadmissible in evidence for the purpose of proving any transaction and that under Section 91, Evidence Act, other evidence was also inadmissible for showing the nature of the transaction.

3. With the exception of the Pull Bench case of *Bam Gopal v. Tulshi Bam* : AIR1928 All641 which was not on all fours with the present case, the attention of the learned Judge was not drawn to some other cases of this High Court, *Bartizan v. BhuJchal Bai* [1918] 47 I.C. 852 and the single Judge of *Maha Mangal Bai v. Kishun Kandu* : AIR1927 All311 and the unreported decision in Section A. No. 1631 of 1927, decided on 29th April 1930, *Srimati Badha Bai v. Debi Das*.

4. We agree with the learned Judge of this Court that in view of the imperative provision of Section 49, Registration Act, the unregistered document could not be received as evidence of any transaction affecting the property. It is also quite clear that when the contract was reduced in the form of writing, oral evidence was not admissible to prove the contract independently of the document. It does not however follow that the plaintiff is debarred from proving his title to the occupancy holdings independently of that document. As pointed out above all the defendants other than defendant 1 admitted the plaintiff's title. Defendant 1, although he denied the plaintiff's title in his written statement, admitted in the witness box that the lands in suit are the occupancy holdings of the plaintiff. There is also independent oral evidence in proof of the plaintiff's title. It was not at all necessary for him to rely upon this unregistered document in order to show that the occupancy holdings belonged to him. We therefore think that there is no legal bar to the establishment of such a claim. In the absence of proof of adverse possession which, would extinguish the plaintiff's claim, he would be entitled to a decree. The learned advocate for the respondent contends before us that the suit as framed does not entitle the plaintiff to a decree for possession. His contention is that the plaint was framed as if it were one in a suit for redemption, and inasmuch

as the mortgage does not exist no suit for redemption lies. In our opinion this is too technical an objection. The substantive relief claimed in the suit is-one for possession and if the plaintiff is entitled to such a relief even if the mortgage is invalid there is no reason why he should be denied that relief.

5. The burden of proving that the plaintiff's right is extinguished lay on the defendants. All the defendants except defendant 1 admitted that they were holding these lands as mortgagees. Defendant 1 was not able to explain how he was in possession; but as pointed out by the lower appellate Court the defendants do not allege adverse possession over the land as proprietors. It is therefore obvious that the defendants have not acquired full proprietary rights by adverse possession over the plots. According to the entry in the revenue paper they have all along been recorded as usufructuary mortgagees. They must therefore be deemed to have claimed possession as mortgagees against the plaintiff. Although the mortgage was invalid the defendants claimed possession as mortgagees over the plots in suit for more than 12 years and must be deemed to have acquired at least the mortgagee's rights. In equity the plaintiff cannot be entitled to recover possession of the property after the lapse of so many years without paying the amount which is due to the defendants ; but the burden of proving the amount due was on the defendants. We doubt very much whether the unregistered deed would be any evidence to prove the amount of the mortgage money inasmuch as that was a part of the contract which was reduced into a form of writing. But fortunately for the defendants the plaintiff himself admitted that Rs. 199 was the mortgage money. In the face of this admission the defendants were not called upon to prove it. We therefore think that the decree of the Court below was correct and should be restored. We accordingly allow this appeal and setting aside the decree of this Court restore that of the lower appellate Court with costs throughout.