

Chaubey Basdeo Vs. Behari Lal

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Court : Allahabad

Decided On : Oct-31-1919

Reported in : 54Ind.Cas.117

Judge : Ryves, J.

Appellant : Chaubey Basdeo

Respondent : Behari Lal

Judgement :

Ryves, J.

1. The facts out of which this appeal arises are as follows. The plaintiff sued to recover one-third of the profits of a grove plus one third of the value of certain trees which he alleged had been cut down by the defendants. The plaintiff's title was based on his assertion that he had redeemed one-third of the mortgage on the property. The Court of first instance dismissed the suit, holding that redemption had not been proved. On appeal the learned Additional Judge of Aligarh allowed the appeal and decreed the suit. On appeal before me the main argument is that the lower Appellate Court should not have admitted in evidence a certain receipt and that if that receipt were not admitted there would be no legal evidence on which the Court could base its findings. The objection to the receipt is to the effect that it had not been registered. Not having been registered, obviously it could not be used in itself as evidence of redemption of the mortgage. It in itself could not in

any way affect the mortgage, but I think the lower Court was entitled to take it into consideration as evidence of the fact that on such a date so much money had been paid and that, coupled with the fact that one-third of the mortgaged property was then given into possession of the plaintiff and has been in his possession ever Since, was good evidence on which he could find as a fact that the plaintiff, had redeemed one-third of the mortgage. No particular form of document is required to redeem a mort gage. That being so, in my opinion the appeal fails. As my decision is open to appeal under the Letters Patent, I proceed to decide a preliminary objection which was raised as to the hearing of this appeal. It was argued by Mr. Panna Lal on behalf of the plaintiff that Section 102 of the Code of Civil Procedure barred this appeal as the suit was of the nature of a Small Cause Court suit and its value was less than Rs. 500. On behalf of the appellant it was urged that under Article 31 of the Schedule to the Provincial Small Cause Courts Act (IX of 1887) such a suit was exempted from the cognizance of a Court of Small Causes. Mr. Panna Lal relied on a case reported as Bindraban v. Sahodra 21 Ind. Cas. 638 : 11 A.L.J. 599 which was a decision of a Divisional Bench. That case is, however, not very helpful, because neither in the arguments nor in the judgment itself is any reference made to Article 31 of the Schedule, nor are any reasons given in the judgment for the view which was taken. In Sheo Bodh v. Surjan 19 Ind. Cas. 427 : 11 A.L.J. 238 and in Brig Pal Singh v. Kunjal 44 Ind. Cas. 689 : 16 A.L.J. 55 : 40 A. 142 the scope of Article 31 has been considered and it seems to me that according to the view taken in those two rulings this suit would come within the scope of the concluding part of Article 31. I, therefore, overrule the preliminary objection. The appeal is dismissed with costs.