Jiwan Singh Vs. Dalip Singh and ors.

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SooperKanoon Citation : sooperkanoon.com/471753

Court : Allahabad

Decided On : Feb-20-1929

Reported in : AIR1929All389

Appellant : Jiwan Singh

Respondent : Dalip Singh and ors.

Judgement :

1. This is a defendant's appeal. The suit out of which this appeal arises was filed by one Dalip Singh, a purchaser of a mortgage dated 6th January 1912, executed by the father of defendants 1 to 5, in favour of defendant 6.

2. Defendant 7 held a subsequent mortgage and put up the property for sale in execution of his mortgage. Defendant 8 bought the property at the sale at the instance of Niranjan Sarup, defendant 7.

3. Plaintiffs claimed a sum of Rs. 626 as due on the mortgage of 6th January 1912, the amount of the mortgage money being Rs. 65. Twelve years having elapsed since the date of the mortgage the plaintiffs claimed that a bond dated 27th March 1914 acknowledged the mortgage in suit and they therefore claim that the suit though filed on 6th March 1925, was not barred by limitation. The two lower Courts have repelled the contention of defendant 8 that the claim was barred by limitation. Defendant 8 has come up in appeal before us and it is contended by the learned Counsel for the appellant that the plaintiff's claim is barred by time as

the document dated 27th March 1914, not having been proved according to law, was not admissible in evidence. It is not denied that the document of 27th March 1914 was a mortgage-deed and thus it was a document which for its validity had to be attested. The contention of Jivan Singh was repelled by the learned Subordinate Judge in appeal on the ground that

Under the present prevailing practice and law the evidence of Ram Chandra to prove the execution of the deed by Zaharia was enough and sufficient to prove the deed.

4. The learned advocate for the respondents is unable to refer to what the learned Subordinate Judge calls the present prevailing practice, nor can he refer to any law which lays down that to prove a mortgage-deed you have only to call the scribe and the scribe has only to identify the signature of the executant. Section 68 Evidence Act, in our opinion, lays down that a document which is required by law to be attested cannot be used as evidence until one attesting witness has been called, or, if no attesting witness is alive, by other means set out in the following sections of the Evidence Act. In this case no attempt was made to prove the document by either calling in an attesting witness, or, even putting any question to Ram Chandra regarding the attesting witnesses or attestation. We are therefore, of opinion that the plaintiffs' suit is barred by limitation and that this appeal must succeed, We dismiss the plaintiffs' suit with costs throughout.