Ram Ratan and ors. Vs. Subhan and ors.

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Court : Allahabad

Decided On : Apr-21-1914

Reported in : AIR1914All419; 24Ind.Cas.93a

Judge : P.C. Banerji, J.

Appellant : Ram Ratan and ors.

Respondent : Subhan and ors.

Judgement :

P.C. Banerji, J.

1. This appeal arises out of a suit brought by the plaintiffs on the basis of a mortgage, dated the 24th of October 1878, executed by three-brothers, viz., Subhan, Ramzani and Shah Muhammad, in favour of Tekchand and his son Khewani deceased. Tekchand had three other sons, viz., Rup Chand, Loka and Ghasi. The plaintiffs are the sons and grandsons of Ghasi and are the surviving members of the family. The defendants are Subhan, the mortgagor, and the legal representatives of the other two mortgagors, and two other persons who are subsequent transferees of the mortgaged property. In the year 1890 Rup Chand alone brought a suit to enforce this mortgage. In that suit a compromise was arrived at and a petition was tiled in Court asking the Court to make a decree in accordance with the terms of the compromise. The Court, however, dismissed the suit on the ground that Rup Chand had not obtained a succession certificate. In

this the Court was clearly wrong because it has been held that in the case of a suit by the survivor of a joint family in respect of a debt due to that family no succession certificate is necessary. However the suit was dismissed for want of a succession certificate. The present suit was brought, as I have said above, by the surviving members of the family. The Courts below have dismissed it on the ground that the fact that a compromise had been arrived at in the suit brought by Rup Chand was a bar to the maintenance of the present suit. In this second appeal it is contended that this view of the Courts below is erroneous. In my judgment this contention is well-founded. The case turns upon the question whether the compromise superseded the mortgage. Had a document been executed on a proper stamp and registered, it would have taken the place of the mortgage and superseded it : but the mere fact of an oral compromise having been arrived at could not supersede the mortgage, unless the Court accepted the compromise and made a decree in accordance with it : this the Court did not do. The mere fact of the suit having been dismissed on the ground that a succession certificate had not been filed would not have precluded Rup Chand from bring ing a suit upon the mortgage after having obtained a succession certificate. As no succession certificate was necessary in this case the plaintiffs were entitled to sue without having obtained one. On the question of admissibility of the compromise in this case I may refer to the recent Full Bench decision of Sadar-ud-din Ahmad v. Chajju 1 Ind. Cas. 558 : 31 A. 13 : 5 A.L.J. 717 : A.W.N. (1908) 204. In my opinion the Courts below were wrong in dismissing the suit.

2. The Court, however, will have to consider whether the plaintiffs are entitled to recover a larger sum than that which the parties admitted under the compromise to be due in 1890. It will also take into consideration any payment which may have been made in pursuance of the terms of the compromise.

3. The result is that I allow the appeal, set aside the decree of both the Courts below and remand the case to the Court of first instance with directions to re-admit it under its original number in the register and to hear it on the merits. Costs here and hitherto will be costs in the cause. Costs in this Court will include fees on the higher scale.