

Baleshwar and anr. Vs. Ram Deo

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Court : Allahabad

Decided On : Apr-29-1914

Reported in : AIR1914All481; 24Ind.Cas.104

Judge : Rafique and ;Piggott, JJ.

Appellant : Baleshwar and anr.

Respondent : Ram Deo

Judgement :

1. The facts of this case are as follows : On the 25th of July 1823 Mohan Singh, the eldest of three brothers, executed a deed of mortgage in favour of Ishri Prasad Singh in lieu of Rs. 601 in respect of 5-annas 4-pies share of all the three brothers. Mohan Singh died leaving two sons, Munni Singh and Nepal Singh. The descendents of Mohan Singh and his two brothers with the exception of his second son, namely, Nepal Singh, executed a deed of sale on the 3rd of May 1883 in respect of their shares in the equity of redemption in the 5-annas 4-pies share in favour of Ram Bharos and Ram Kumar. Ram Bharos and Ram Kumar instituted a suit for redemption in April 1884 against the heirs of Ishri Prasad Singh in respect of the entire 5-annas 4-pies share mortgaged on July the 25th, 1823. They stated in their plaint that they were transferees to the extent of 2-annas 8-pies share only. But as the mortgage sought to be redeemed was one transaction and could not be split up, and as the other persons interested in the redemption of the mortgage had not joined in the suit, the plaintiffs were seeking to redeem the

entire mortgage and had made the other persons entitled to redeem as pro forma defendants in the case. Among the persons mentioned in the plaint as entitled to redeem was Parsidh Narain, son of Nepal Singh, who figured as defendant No. 9 in the case. The claim of Ram Bharos and Ram Kumar was decreed on September the 22nd, 1884. The present suit is brought by the representative of Nepal Singh for the redemption of his share against the legal representatives of Ram Bharos and Ram Kumar and some others. The contesting defendants in the case are the representatives of Ram Kumar. They resisted the suit on the ground among others of limitation. It was said that the mortgage sought to be redeemed was dated July the 25th, 1823, and had become barred long prior to the institution of the suit. The rejoinder for the plaintiff was that there was an acknowledgment in April 1884 which saved the limitation. The Court of first instance held that the claim was barred by limitation and dismissed it. On appeal the learned Subordinate Judge disagreeing with the first Court found that the claim was not barred by limitation. He accordingly set aside the decree of the first Court and remanded the case under Order XLI, Rule 23, Civil Procedure Code, for trial on the merits. The defendants-appellants have come up in appeal to this Court and contend that the claim of the plaintiffs-respondents is barred by time.

2. The point raised in this appeal depends upon the interpretation of Section 19 of the Indian Limitation Act. The provisions of that section are as follows : 'If before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.' It is contended on behalf of the appellants that the allegation in the plaint of 1884 that Nepal Singh's son was one of the mortgagors and had a right of redemption did not amount to an acknowledgment of liability on behalf of Ram Bharos and Ram Kumar to be redeemed themselves in case of the success of their suit. We think that this contention is not sound. The statement in the plaint of 1884 by Ram Bharos and Ram Kumar that Nepal Singh's son had a right to redeem was an admission in respect of his right with regard to the property in suit. This view is supported by the ruling of Sukhamoni Chowdhurani v. Ishan Chunder

Roy 25 I.A. 95 : 25 C. 844 : 2 C.W.N. 402. In that case one of the co-debtors admitted the debt in an application to the Manager of the State, and another debtor paid off the debt and sued for contribution. His claim was met with a plea of limitation. But it was rejected on the ground that the admission made in the petition to the manager amounted to an acknowledgment and saved limitation. We, therefore, think that the claim of the plaintiff-respondent is not barred by limitation and that the order of the Court below was correct. The appeal fails and is dismissed with costs.

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