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Court : Allahabad

Decided On : Apr-23-1909

Reported in : 2Ind.Cas.627

Judge : Richards, J.

Appellant : Phul Chand

Respondent : Jodha and ors.

Judgement :

Richards, J.

1. This was a suit for declaration that a certain mortgage by a Hindu widow and her daughters will only bind the estate during the widow's life-time. The mortgage was made in favour of the defendant appellant Phul Chand. Musammat Kokla and Musammat Tulsha are the two daughters of Musammat Harko who made the mortgage. Mussammat Harko is the widow of one Hardeo, and Musammat Kokla and Musammat Tulsha are the daughters of Hardeo. They are described in the plaint as married women, and it is admitted that after the death of Musammat Harko the property will go to Mu-sammat Kokla and Musammat Tulsha and the survivor of them, and if either of them has male issue, the property will go to such issue. The Court below finds that there was Government revenue due. It also finds that Phul Chand caused the money which he lent to be paid into the Tahsil Treasury. On the other hand the Court distinctly finds that there was no legal

necessity, that Phul Chand knew that Musammat Harko could have paid the Government revenue and that allowing it to go into arrears was a mere device. The Court says that Phul Chand is in collusion with the widow. The first question which arises is--was the Court on these facts bound to find legal necessity? In my opinion it was not. Legal necessity must be real necessity. The Court below in fact finds that there was no real necessity, and that Phul Chand knew that there was no real necessity.

2. The next question is whether or not the suit can be maintained by the plaintiff having regard to the fact that he cannot succeed during the joint lives of the three ladies, and of the survivor of them, and then in the event of neither Kokla nor Tulsha leaving male issue. I think that the Courts ought not to, encourage suits of this nature by remote reversioners. I think, however, that the result of authorities is that a remote reversioner can sue in a case like the present. If the three ladies were now to die, he would succeed. The two immediate reversioners will only have life-estates, and the Court below finds that they have consented to the mortgage, and, thereby, precluded themselves from bringing a suit to protect the estate.

3. The third ground is that the plaintiff was not entitled to a declaration that the mortgage was only binding during the life-time of Musammat Harko. It is obvious that the decree appealed from is wrong in this respect. The mortgage will be binding during the life-time of the three ladies and, the survivor of them, I allow the appeal to this extent that the declaration will be that the mortgage is binding only on the estates: of Musammat Harko, Musammat Tulsha and Musammat Kokla. I think that the plaintiff suing for a declaration of this kind ought to have prayed for a proper relief, and I, accordingly, direct that the appellant will have his costs of this appeal from the respondent plaintiff including fees on the higher scale. In the Courts below each party will pay his own costs.