

Ranchhore and ors. Vs. Bansidhar and ors.

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Court : Allahabad

Decided On : Jul-04-1930

Reported in : AIR1931All739

Appellant : Ranchhore and ors.

Respondent : Bansidhar and ors.

Judgement :

Bennet, J.

1. This is a second appeal by three defendants, who are transferees from a mortgagor. The facts are that on 19th February 1926 Mt. Sarawan the mother and guardian of a minor Tunde executed a simple mortgage deed for Rs. 775 in favour of the plaintiff Bansidhar. Tunde died when he was a minor and his widow defendant 1 Mt. Larhai alias Raja Beti, executed a sale deed of her right to redeem in favour of defendants 2 to 5, the appellants before us. The plaintiff has brought a suit to enforce his simple mortgage deed by sale. The Court of first instance granted a preliminary decree under Order 34, Rule 4 but stated that a final decree could not be granted because the property could not be sold owing to Section 16, Bundelkhand Land Alienation Act. In first appeal the lower appellate Court has ordered that defendants be given six months' time to pay the decretal amount, and if they do not do so within that period the plaintiff will be entitled to recover the money by getting a temporary alienation of the mortgaged property from the Court.

The only point taken in second appeal by the transferee-defendants is that this remedy, granted by the lower appellate Court is opposed to the Bundelkhand Land Alienation Act, and that the suit should have been dismissed because the civil Court cannot grant any decree or give any direction affecting the landed property.

2. The argument in appeal before us is a very simple one, whether Section 16, Bundelkhand Land Alienation Act does or does not bar the remedy of a simple mortgagee to obtain sale of the mortgaged property. We have been referred to the Full Bench ruling of *Ram Sahai Singh v. Debi Din* : AIR1926 All617 , in which it was held that where a simple mortgage has been executed by one member of an agricultural tribe in Bundelkhand in favour of another member of an agricultural tribe, Section 9 of that Act will not apply. This ruling was decided by a majority of two out of three Judges. The two Judges in the majority both stated that Section 16 of that Act would bar the remedy by sale in execution of the simple mortgage decree. We were also referred to the case of *Kalka Praaad v. Ajudhia Prasad* : AIR1929 All421 . This was a case of a mortgage by conditional sale, and the remedy granted was foreclosure. That however has no direct bearing on the case before us which deals with a simple mortgage. The learned Counsel for the plaintiff invited our attention to certain remarks of one of the learned Judges in *Kalka Prasad v. Ajudhia Prasad* : AIR1929 All421 in which he repeated the view which he had held as a Judge in the minority in the Full Bench ruling mentioned above. The parties in the present case to the mortgage deed are both agriculturists. Some doubt has been raised in argument of the precise meaning and intention of various sections of the Bundelkhand Land Alienation Act. We consider that the scheme of this Act is as follows: Firstly, in regard to usufructuary mortgages and mortgages by conditional sale made by an agriculturist in favour of an agriculturist, no restraint is made on such mortgages by this Act. Secondly, in the case of usufructuary mortgages and mortgages by conditional sale made by an agriculturist, in favour of a non-agriculturist, Section 6 of the Act lays down the restriction that, the period for which the mortgagee will be entitled to hold possession is restricted to 20 years. Thirdly, in the case of simple mortgages by an agriculturist in favour either of an agriculturist or of non-agriculturist, in both cases Section 16 of the Act bars any remedy by sale in execution of a simple mortgage.

3. In regard to the view which was urged by the learned Counsel for the plaintiffs-respondents that Section 16 only barred a sale in execution in the case in which the mortgagee was a non-agriculturist, we consider that if that had been the intention of the Act, then a restriction on this class of mortgage where the mortgagee was a non-agriculturist would undoubtedly have been entered in Section 6. The fact that there is no such restriction in Section 6 leads us to conclude that Section 16 is a perfectly general section applying both to agriculturists and to non-agriculturists, who are mortgagees on a simple mortgage.

4. For these reasons we allow this appeal and we set aside the decree of the lower appellate Court, and we dismiss the suit of the plaintiff against defendants 2 to 5, appellants before us with costs in all Courts. The only remedy which we grant to the plaintiff is a simple money decree. As his suit is within time, the due date for payment under the mortgage being Sambat 1980 (1923) and the suit having been brought in 1926, the plaintiff therefore is entitled to this simple money decree and that money decree will be against the assets of Tunde, if any which are in the hands of his widow Mt. Larhai, defendant 1. The costs will also be allowed to the plaintiff against these assets on this simple money decree. Pendants lite interest and interest till the date of realization at the rate of 6 per cent per annum are allowed.