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Court : Allahabad

Decided On : Jun-17-1920

Reported in : 76Ind.Cas.815

Judge : Sulaiman and ;Gokul Prasad, JJ.

Appellant : Birbal

Respondent : Behari and ors.

Judgement :

1. The question in this appeal is purely one of fact, whether a certain document, namely, a mortgage-deed upon which the present suit has been based, was one for consideration and a genuine document, or whether it was a fictitious and fraudulent document executed without consideration to defeat the rights of the appellant to whom the mortgagor was indebted. The Court of first instance held in favour of the appellant. On appeal the learned Judge of the lower Appellate Court came to a different conclusion and held that the mortgage-deed in suit was one for consideration and was not shown to be either fraudulent or fictitious, nor had it been executed to defeat the appellant's rights. As matters stand, these are findings of fact with which we cannot interfere in second appeal, but it has been contended before us that the admission of the mortgagor about his indebtedness to the plaintiff mortgagee to remove which the present mortgage was executed, is not binding upon the appellant, who is an arretion-purchaser of the property in execution of a simple money-decree of his own. We think that this admission is at

least admissible in evidence against the appellant auction-purchaser, who is a representative of the original mortgagor and. as such could be received in evidence by the lower Appellate Courts and it could decide upon the weight to be given to that admission. It has been held in the case of Bakhshi Ram v. Liladhar 21 Ind. Cas. 619 : 11 A.L.J. 371 at p. 375 : 35 A. 353 that such an admission is admissible in evidence and we see no reason to depart from the principle therein laid down by Mr. Justice Chamfer. The lower Appellate Court has taken this admission into consideration and has given a certain weight to it and. we cannot interfere with its finding in second appeal. The appeal, therefore, fails and is dismissed with costs including in this Court fees on the higher scale.

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