

Babu Ram Dubey and anr. Vs. Har Narain Dube and ors.

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SooperKanoon Citation : sooperkanoon.com/484236

Court : Allahabad

Decided On : Jul-02-1929

Reported in : 119Ind.Cas.110

Judge : Mukerji, J.

Appellant : Babu Ram Dubey and anr.

Respondent : Har Narain Dube and ors.

Judgement :

Mukerji, J.

1. This appeal must succeed.

2. The facts briefly are these. One Jagannath Dube mortgaged a certain piece of land which is now represented by plot No. 99, in 1862. He sold the land to the predecessor-in-title of the present plaintiffs, the appellants before me, in 1867. The purchasers instituted a suit for redemption and, by a compromise, succeeded in the suit. They got possession not only over plot No. 99 but over an additional piece of land, which is now recorded as Plot No. 100-1. This was in 1887. It has been found on an issue being remanded that the plot No. 100 did belong to Jagan Dube. Evidently the mortgagees had taken possession of that plot under the colour of their mortgage. When the redemption took place, the mortgagees handed over, as they were bound to do, not only plot No. 99 but also plot No. 100-

1. Since 1887, it has been found, the plaintiffs have been in possession not only over Plot No. 99 but also over plot No. 100-1. The respondents who now represent the estate of Jagannath Dube, succeeded in obtaining an order, in the Revenue Court directing the removal of the plaintiffs' name from the record, so far as the Plot No. 100-1 was concerned; On this, the plaintiffs brought the suit out of which this appeal has arisen for a declaration that they are the owners of Plot No. 100-1. In the alternative, they have sued for possession.

4. As already stated, it has been found that the plaintiffs are in possession of Plot No. 100-1. The learned District Judge, on appeal, has held that the possession of the plaintiffs is that of a mortgages. The plaintiffs complain of this finding mi I think rightly.

5. When the redemption suit was decreed it is immaterial whether by compromise or on contest the mortgagees' title came to an end and the property went back, as it should on redemption, to the original proprietor. The proprietary rights of Plot No. 99 were in the plaintiffs but the proprietary right in Plot No. 100-1 was in Jagan Dube's descendants. Qua Plot No. 100-1, the possession of the plaintiffs, they having no interest, became adverse to Jagan Dube's descendants. There was no trust in favour of Jagan Dube's descendants. I fail to see how it can be said that the plaintiffs are in possession as mortgagees. If the plaintiffs are mortgagees, the question would arise what is the amount of the mortgage-money? Evidently, there was no mortgage and, therefore, there is no mortgage-money to be paid.

6. In the result, I allow the appeal, modify the decree of the Court below and give the plaintiffs a declaration that they are in possession of Plot No. 100-1 as proprietors. The plaintiffs will have their costs throughout.