

Narain Vs. Ram Saran Das and anr.

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Court : Allahabad

Decided On : Jul-03-1924

Reported in : AIR1924All871; 85Ind.Cas.490

Judge : Daniels and ;Neave, JJ.

Appellant : Narain

Respondent : Ram Saran Das and anr.

Judgement :

1. The plaintiff, Ram Saran Das, and the second defendant, Shadi Ram, were two undivided brothers. Shadi Ram, in 1913, executed a mortgage of his undivided share in favour of the father of the appellant. Subsequently a partition took place between the two brothers and the particular property to which the mortgage related was assigned wholly to the plaintiff. After the partition the appellant's father brought a suit for sale on his mortgage but did not implead the plaintiff. He obtained a decree against Shadi Ram, and the appellant, his father having died, bought the property in execution proceedings. The plaintiff subsequently brought the present suit to recover the property, and under the rule laid down in Bhup Singh v. Chhedda Singh 58 Ind. Cas. 171 : 42 A. 596 : 18 A.L.J. 807 : 2 U.P.L.R.(A) 345, his right to do, so cannot be disputed. Narain has put forward three grounds of appeal. The first is that Shadi Ram should be treated as having executed the mortgage in the capacity of manager of the joint family. This is a plea which was never raised in either of the Courts below, and it is too late to put it

forward now. The second plea is that the plaintiff is estopped from bringing the suit, because he did not intervene in the suit brought by the appellant against Shadi Ram. This plea is obviously without force. The third plea is that the partition between the two brothers was fraudulent. This is a plea which was raised and decided in the Courts below and the finding of both Courts is that no fraud is established. The appeal, therefore, fails and it is hereby dismissed with costs. Under all the circumstances of the case, we refrain from allowing fees on the higher scale.

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