

Bhera Vs. Rameshwarlal

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SooperKanoon Citation : sooperkanoon.com/758410

Court : Rajasthan

Decided On : Nov-11-1971

Reported in : 1971WLN684

Judge : Jagat Narayan, C.J.; and B.P. Beri, J.

Appeal No. : D.B. Civil Special Appeal No. 45 of 1967

Appellant : Bhera

Respondent : Rameshwarlal

Judgement :

Jagat Narayan, C.J.

1. This is a special appeal by the leave of a learned Single Judge of this Court and arises out of a suit for redemption of an agricultural holding filed by one Hema on 12-9-50. Hema is now represented by Rameshwar Lal, respondent. The suit was filed against Moolcband and Smt. Chandi who were the heirs of the original mortgagee. The mortgagee rights have since been assigned to Bhera, appellant.

2. The suit was decreed by all the courts below.

3. The contention of the appellant is that the suit is governed by Article 7 of the Qanun Miyad Mewar and is barred by Limitation. The holding in suit was mortgaged in the year 1899 AD. by means of an unregistered deed. The suit for

redemption was filed on 12-9-50.

4. It may be mentioned here that before 1-3-72 the law of limitation & the law of registration in Mewar were contained in different circulars issued from time to time. These laws were codified for the first time in 1932 and were brought into force with effect from 1-7-32.

5. So far as the present suit is concerned there are 3 articles which require consideration namely Articles 1, 2 and 7 which run as follows:

1. By a mortgagee for foreclosure 60 years When the money secured by or sale on the basis of a mortgage becomes due under registered instrument. its terms.

2. Against a mortgagee to redeem or to 60 years When the right to redeem recover possession of immovable or to recover possession property mortgaged. accrues.

7. All suits between mortgagee and 15 years When the right to sue mortgagee on the basis of unregistered accrues. deeds.

6. It is settled law that the right of redemption and the right of foreclosure are co-extensive--see Mulla's Commentary on the Transfer of Property Act. 5th Edition, page 412. Article 1 applies to suits for foreclosure or sale on the basis of a registered mortgage. The period of limitation is 60 years. Under Article 7 the period of limitation for a suit for foreclosure or sale of an unregistered mortgage is 15 years If Article 2 is held to apply both to registered and unregistered mortgages

as is contended on behalf of the respondent then a suit for redemption on the basis of an unregistered mortgage can be filed within 60 years. The limitation for bringing a suit for foreclosure or sale of such a mortgaged property under Article 7 is only 16 years. As we have said above both the periods should be co extensive. If on the other had Article 2 is held to apply only to suits for redemption or recovery of possession on the basis of registered deed there will be no such anomaly. We are of the opinion that the law making authority either inadvertently omitted to put down in Article 2 that it is applicable only to suits based on registered mortgages or thought that it was unnecessary to make a mention about it as Article 2 follows Article 1 in which it is mentioned that it is applicable to suits based on registered documents.

7. It is no doubt true that generally the court should give a literal interpretation to the words of the statute. There are however cases in which the court has to fill in gaps left on account of the ineptness of drafting. In the words of Frank J, 'The necessary generality in the wording of many statutes and ineptness of drafting in others frequently complex the courts, as best as they can to fill in the gaps, an activity which no matter how one may label it, is in part Legislative.'

8. We accordingly hold that Article 2 only applies to suits for redemption based on registered mortgages. As the present suit is based on an unregistered mortgage Article 7 is applicable to this case.

9. The learned Counsel for the respondent prays for an opportunity to move an application for amendment of the plaint so as to plead acknowledgment extending limitation which he did not plead in view of the fact that in two previous decisions of this Court Article 2 was applied to suits for redemption of unregistered mortgages. Two months' time is allowed to him to move an application.