

Baishnab Charan Laha Vs. Basunta Kumar Paln and anr.

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SooperKanoon Citation : sooperkanoon.com/860330

Court : Kolkata

Decided On : Jun-25-1908

Reported in : 4Ind.Cas.68

Judge : Robert Rampini, A.C.J. and ;Ryves, J.

Appellant : Baishnab Charan Laha

Respondent : Basunta Kumar Paln and anr.

Judgement :

1. This appeal arises out of a suit which was brought for setting aside a decree for foreclosure.

2. The facts are that defendant No. 2 was the mortgagor and defendant No. 3, the mortgagee, who sold his mortgage rights to defendant No. 1. Defendant No. 1 brought a foreclosure suit No. 25 of 1905. But it was compromised between him and defendant No. 2. The petition of compromise was filed on the 21st February, 1905, and under its terms defendant No. 2 was to pay Rs. 165 and costs in full satisfaction of the claim within six months from the 21st February, 1905, failing, which defendant No. 2 would be barred for ever from redeeming the mortgaged property. The defendant No. 2 sold his rights to the plaintiffs. On the 14th August, 1905, the plaintiffs made an application for depositing the decretal amount in Court and then he came to know that the decree had been made absolute a few days after the expiration of three months from the date of decree and the application

was rejected. The plaintiffs contend that defendant No. 1, fraudulently caused the decree to be made absolute although six months' time had been given by the solenamah and hurriedly took possession of the mortgaged property without waiting for the expiry of six months. The decree for foreclosure was passed on the 30th March, 1905, and the decree was made absolute on the 8th July 1905, only three months' time having been given by the decree to defendant No. 2. The lower appellate Court has, on these facts, found that the decree has been properly set aside by the Court of first instance.

3. Now the defendant No. 1 appeals and contends that the facts found are not sufficient to constitute fraud. We cannot agree with this contention. We think that the facts found constitute fraud and justified the lower appellate Court in setting aside the foreclosure decree. Defendant No. 1 knew very well that he could not apply for making the decree absolute until six months from the 21st February 1908 had expired and it was fraudulent for him to apply before the expiry of six months for making the decree absolute. The Court made the decree absolute on the 8th July, 1905, in ignorance of the fact that there had been a contract between the parties that defendant No. 2, was to have six months' time. The Court would never have passed the decree, if this fact had been brought to its notice and in the circumstances it was fraudulent on the part of defendant No. 1, to apply to have the decree made absolute. We, therefore, see no reason to interfere with the judgment of the lower appellate Court. We dismiss this appeal with costs.