
(1924) 07 AHC CK 0089
In the Allahabad High Court

Babu Sanwal Das and Others

APPELLANT

Vs

Saiyad Ali Mahdi and Others

RESPONDENT

Date of Decision : 11-07-1924

Acts Referred:

Limitation Act, 1908 — Article 19

Citation : 85 Ind. Cas. 330

Hon'ble Judges : Mukerjee, J; Dalal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal raises two questions: first, whether having regard to the fact that the appellants were made parties to the suit for redemption after the expiry of sixty years from the date of the mortgage, the suit against them was time-barred and secondly whether the statement of the property sought to be sold, dated the 21st June, 1919, signed by Sanwal Das operated as an acknowledgment u/s 19 of the Limitation Act, and, saved the suit from being time-barred.

2. The facts briefly are these: There was an ancient mortgage dated the 16th July. 1859 for Rs. 1,200. The suit to redeem the mortgage was brought on 29th. January-1918. The mortgagees or some of them made a sub-mortgage of their mortgagee rights with respect to a 7 annas 81/2 pies share on 19th September 1900 in favour of two persons Sanwal Das and Kampta Prasad. The sub-mortgage was a simple one Sanwal Das and Kampta Prasad got a decree for sale against their mortgagors and brought the property to sale and then selves purchased on 20th March 1920. Kampta Prasad has since died. Sanwal Das, his brother Baldeo Das, Kampta Prasad's sons and other members of the family were impleaded in the suit for redemption by order dated the 23rd December 1920. These are the parties who are the appellants before this Court. Three of these contested the suit and pleaded limitation among other matters. In answer to this plea of limitation the plea of acknowledgment was taken and it was

further urged that the actual sale having taken place pending the suit, the question of limitation does not arise.

3. As we have stated, there are two points for decision in the case. On the first point it appears to us that the auction purchase by the appellants can be referred only to the simple mortgage they obtained on 19th September 1900. It is not the case that this auction purchase took place under a simple money decree and the right to the property accrued to the appellants for the first time at the date of the sale. They already had an interest in the property by the mortgage, simple though it was, dated the 19th September 1900. We are, therefore, of opinion that the Courts below were not right in holding that the suit was not barred against the appellants if there happened to be no acknowledgment.

4. Coming to the second point we think that the Courts below were right in treating the statement of properties, Fard-i-Taliqa, signed by Sanwal Das, as a sufficient acknowledgment of the liability of the appellants to be redeemed. The mortgage in suit, namely, the mortgage of 1859, uses a rather peculiar word which has become almost obsolete at this date, namely, baiul khayar in describing the nature of the mortgage. The document was a mortgage by conditional sale. Their word that is generally used, to denote a mortgage by conditional sale in the vernacular is baiul ufa or bai miadi. In the list of properties to be sold signed by Sanwal Das he described the property 7 annas 81/2 pies share in the village Deokali as baiul khayar. Clearly he mentioned the very expression which had been used in the mortgage of 1859. We have, therefore, not the least doubt in our minds that Sanwal Das in describing the property mentioned that the property was subject to the very mortgage of 1859. There is, therefore, no vagueness about the acknowledgement.

5. The question now is whether Sanwal Das was authorised to make an acknowledgment on behalf of the family. We have already stated that all the appellants, who were large in number, were impleaded as subsequent transferees on account of the auction purchase dated the 20th March 1920. The purchase was made by only two persons Sanwal Das and Kampta Prasad. It follows, as the lower Appellate Court finds, the family being a joint one, the purchase was made for the benefit of the entire family. Sanwal Das alone signed the list for himself and for his co-decree-holder and co-parcener, Kampta Prasad. Evidently he was acting on behalf of the family. Such is the finding of the Court below. We hold, therefore, that there is a valid acknowledgment of the mortgage on behalf of the family by Sanwal Das.

6. The result is that the appeal fails and it is hereby dismissed with costs which will include Counsel's fees in this Court on the higher scale.