
(1920) 12 AHC CK 0016
In the Allahabad High Court

Bajnath Prasad and Others

APPELLANT

Vs

Raja Narandra Bahadurpal and Others

RESPONDENT

Date of Decision : 22-12-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 91

Citation : AIR 1921 All 223 : 61 Ind. Cas. 74

Hon'ble Judges : Ryves, J; Rafique, J

Bench : Division Bench

Judgement

1. It appears that one Raja Mahesh Sitla Box Singh executed a deed of mortgage on the 6th of July 1885 in favour of the father of the defendants-appellants, under the said mortgage-deed one of the items of property mortgaged was a ten-anna, six pie share in Mama Gaura Goshain. In 1910 the sons of the mortgagee instituted a suit to recover the money due on the mortgage and obtained a decree on the 15th of September 1910. On the 25th of July 1914, as final decree was passed in their favour. On the 26th of November 1914 the decree holders applied for execution of the decree. In the execution application, among other property that was sought to be sold, the share 1 of the judgment-debtor in the village of in Gaura Goshain was also entered and described as ten annas 6 pies with a Government revenue of Rs. 108, At the auction Bale the plaintiff-respondent No. 1 and one of the defendants-appellants made bids. One of the defendants-appellants bid up to Rs. 4,000 but the plaintiff-respondent No. 1 made a higher bid of Rs. 4,100 and the share was knocked down to him. Subsequent to his purchase, the plaintiff-respondent No. 1 discovered that the real share of the mortgagor, Raja Mahesh Sitla Bux Singh, in the village of Gaura Goshain was only ten-pies, 12 chotaks. Thereupon he went to the Court that has executed the decree and asked for the sale to be set aside. The application purported to be made under Order XXI, Rule 91, Civil Procedure Code. On the objection of the decree-holders, that no such application lay, the application was rejected. After the rejection of his application the plaintiff No. 1 brought the suit out of which this appeal has arisen for the recovery of Rs. 4,100 by cancellation

of the pale, or in the alternative to recover Rs. 3,760 being the ratable price of 9-annas and some pies. In his suit the plaintiff-respondent impleaded the decree-holders, the judgment-debtors and persons who were in possession of the 9 annas and some pies share in the village of Gaura Gashain. The claim was resisted principally by the decree holders. It was urged on their behalf that the plaintiff-respondent bought the rialto and in his over they were, of that judgment debtors. The purchase was mare as a Court sale and no warranty of title is ever given at such sales. In his plaint the plaintiff-respondent bad charged the decree holders with deliberate fraud and misrepresentation. This allegation was categorically denied by the decree-holders in their defence. No oral evidence was given by any, party to the suit before the Court of first instance. The Pleader the decree-holders admitted that there ere differences in the recital of the share E the judgment-debtors in the village of Gaura Goshain as entered in the khewat and a shown in the sale-proclamation. The learned Subordinate Judge dismissed the claim. On appeal, the learned District Judge found that there was a clear misrepresentation this share of the judgment debtors in the ale proclamation but he did not hold that hat misrepresentation was made by or at the instance of the decree holders HP, however, followed the appeal and decreed the claim, loading that a misrepresentation irrespective of the question as to who made it, is by itself a ground for relief under the Contract. The decree-holders have come up in appeal to this Court and they contend that the view taken of the law by the learned District Judge is erroneous. At first, curing the course of the argument, we were under the impression from the remarks of the learned Subordinate Judge, just after the findings on Issues NOs. 1 and 2 at page 9 of the paper-book, that the erroneous entry in the sale-proclamation was deliberately made by the decree-holders or their agate with a view to inducing the intending purchasers to think that the share of the judgment debtors in the village of Gaura Goshain was ten-annas, six-pies. On an examination of the record, however, we find that there is no evidence to the effect that any misrepresentation was intentionally made by or on behalf of the decree-holders. Somehow the mistake crept into the sale proclamation with regard to the extent of the share of the judgment-debtors in the village of Gaura Goshain. The plaintiff-respondent has no right of relief on the basis of such a mistake. The section of the Contract Act relied upon by the learned District Judge has no application to the present case. We are of opinion that the view of the law is taken by the learned Subordinate Judge was correct. We allow the appeal, set aside the decree of tie lower. Appellate Court, of first restore that of the Court of first instance with costs including fees in this Court on the higher scale.