
(1910) 02 AHC CK 0038
In the Allahabad High Court

Bhawani Singh and Others

APPELLANT

Vs

Jang Bahadur Singh

RESPONDENT

Date of Decision : 25-02-1910

Acts Referred:

Transfer of Property Act, 1882 — Section 63, 66

Citation : 6 Ind. Cas. 569

Hon'ble Judges : Tudball, J;Griffin, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The facts out of which this appeal has arisen are as follows: The plaintiff is the transferee of mortgagee rights created by a mortgage-deed of the 12th of December, 1888. The mortgage was usufructuary. In the rainy season of 1307 Fasli, corresponding to July--September 1899, eleven out of the twelve bights, of the land mortgaged, were submerged in the river Ganges. In the rainy season of the following year, i.e., July--September, 1900, the mortgaged land was wholly submerged. Here we may observe that the Court below has fallen into an error in saying that the total submergence took place between September 1900, and September 1901. The error is due to confusing the agricultural with the Fasli year. The Khasra of 1307 Fasli referred to in the judgment of the Court below is clearly the Khasra prepared in the agricultural year commencing on the 1st of July, 1899, and not as the learned Subordinate Judge takes it, in the Fasli year commencing on the 20th of September, 1899. The plaint sets out that from the end of Bhadon, 1307, Fasli, corresponding roughly to August, 1899, the plaintiff began demanding of the defendants to re-pay the mortgage-money or to furnish fresh security for the loan, that the defendants paid no heed to his demands, and finally in June, 1906, refused either to re-pay the mortgage-money or to furnish fresh security. The plaintiff there-upon instituted this suit on the 18th of July 1906, to recover Rs. 499 principal, and Rs. 483-8 interest by way of damages. The Court of first instance decreed the claim for the principal and Rs. 351 as interest. The lower appellate Court modified the decree by reducing the amount

of interest to Rs. 235. The defendants come here in second appeal. Several pleas were raised in the Court below but the only plea with which we are concerned here is that of limitation. The Courts below appear to have assumed that the period of limitation within which the suit may be brought was six years from the date of the total destruction of the security. The lower appellate Court does not refer to the article of the Limitation Act under which in its opinion the case falls. The contention of the learned Counsel for the appellant is that Article 97 is applicable, and farther that if Article 113 or 123 be held to apply, the suit is also barred; and also that limitation should be held to run from the time of the first demand made by the plaintiff to which no reply was given by the defendant. The last clause of Section 68, Transfer of Property Act. runs as follows: Where by any cause other than the wrongful act or default of the mortgagor or mortgagee the mortgaged property has been wholly or partially destroyed or that security is rendered insufficient as defined in Section 66, the mortgagee may require the mortgagor to give him within a reasonable time, another sufficient security for his debt, and if the mortgagor fails so to do, may sue him for the mortgage-money." It is clear that plaintiff's right to sue accrued when the mortgagors, after being allowed a reasonable time, failed to furnish additional security for the loan. The plaintiff had the option to require additional security on the happening of any of the three contingencies, namely, partial destruction of the security, entire destruction of the security, or when the security became insufficient within the meaning of Section 66, Transfer of Property Act. He exercised that option by requiring additional security after the rainy season of 1899 when the security of his mortgage was partially destroyed, i.e., he exercised his option on the happening of the first contingency. After the mortgagors had at once refused, the plaintiff would have had an immediate right to sue. No immediate refusal is alleged. The plaintiff was then bound to allow the mortgagors a reasonable time within which to comply with his demand. The question is what would be a reasonable time in the circumstances of the case. The plaintiff has allowed nearly seven years to elapse before taking action. No good reason has been shown us why such a long period should be deemed reasonable in the circumstances of the case. In our opinion a period of six months would be a liberal allowance in a case like the present to enable the mortgagors to comply with the requests of the plaintiff. In this view, the plaintiff's right to sue accrued about the end of February, 1900. The suit having been brought more than six years after the accrual of the cause of action, is, in our opinion, barred, whether a period of six years or a period of three years is applicable. It is not necessary for the decision of this appeal to express any opinion as to the article of the Limitation Act which applies. The appeal is decreed. The orders of the Courts below are set aside and the suit is dismissed with costs in all Courts, including in this Court fees on the higher scale.