
(1915) 03 CAL CK 0044
In the Calcutta High Court

Bireshwar Samanta and Others

APPELLANT

Vs

Srimati Priya Sakhi Debi

RESPONDENT

Date of Decision : 03-03-1915

Acts Referred:

Citation : 28 Ind. Cas. 917

Hon'ble Judges : Fletcher, J

Bench : Single Bench

Judgement

Fletcher, J.—This is an appeal from a decision of the learned Subordinate Judge of Burdwan dated the 3rd October 1912, reversing the decision of the Munsif. The suit was brought to enforce a mortgage security and the only question that arises in the present appeal is the question of limitation, and that question whether when a mortgagor has been ousted from possession of the property, the possession of a third party becomes adverse also as against the mortgagee. The view that has been taken by a Division Bench of this Court in the case of Aimadar Mondul v. Makhan Lal Dey 33 C. 1015 : 10 C.W.N. 904 is that the possession in such a case would not be adverse against the mortgagee. That decision has been commented upon by Mr. Justice Mukerjee in his judgment in the case of Nandkumar Dobey v. Ajodhya Sahu 14 C.L.J. 292 : 11 Ind. Cas. 465 : 16 C.W.N. 209 : 21 M.L.J. 397 : 9 M.L.T. 264. The comments of the learned Judge will be found at Pages 298 and 299. The case has been further observed upon and dissented from in the judgment of the Madras High Court in the case of Ramasawmi Chetti v. Ponna Padayachi 9 Ind. Cas. 28 : 36 M. 97 : (1911) 1 M.W.N. 209 : 21 M.L.J. 397 : 9 M.L.T. 264. Of course, if the case in Aimadar Mondul v. Makhan Lal Dey 33 C. 1015 : 10 C.W.N. 904 stands by itself, I am bound by it and I must follow it here. But the learned Judge in that case seems to have overlooked several authorities that establish a contrary proposition. Those cases are the case of Prannath Roy Chowdry v. Rookea Begum 7 M.I.A. 323 : 4 W.R. (P.C.) 37 : 1 Suth. P.C.J. 367 : 1 Sar. P.C.J. 692 : 19 E.R. 331 are the observations of their Lordships of the Judicial Committee where a different view was taken), the case of Sheoumber Sahoo v. Bhowaneedeen Kulwar 2

N.W.P.H.C.R. 223. The other decisions are cited in the course of the judgment of Mr. Justice Abdur Rahim in the case of Ramasawami Chetii v. Ponna Padayachi 9 Ind. Cas. 28 : 36 M. 97 : (1911) 1 M.W.N. 209 : 21 M.L.J. 397 : 9 M.L.T. 264. Then we have also got the decision of the Privy Council in the case of Karan Singh v. Bakar Ali Khan 5 A.I. : 9 I.A. 99 : 4 S.P.C.J. 382. That case seems to one, when carefully looked at, to be inconsistent with the case of Aimadar Mondul v. Makhan Lal Dey 33 C. 1015 : 10 C.W.N. 904. It was assumed by the Privy Council in the case of Karan Singh v. Bakar Ali Khan 5 A.I. : 9 I.A. 99 : Saraswati's P.C.J. 382 that in a case of dispossession by a third party there is no distinction between the positions of the mortgagor and the mortgagee. That seems to me clear upon reading the judgment. I think, having regard to the decisions of the Privy Council, I am bound to follow the views taken in those cases. The clear finding of fact made by the Court of first instance is that the mortgagors of the plaintiff were ousted some time in the year 1892. This suit was not brought till the 23rd August 1905. In that view, the present appellants must have been in possession adverse to the mortgagors of the plaintiff for more than twelve years prior to the institution of the suit, and, in my opinion, on a consideration of the decision of the Privy Council, that possession was also adverse to the plaintiff, the mortgagee of the defendants Nos. 1 and 2. That finding of fact by the Court of first instance has not been overruled or dissented from by the lower Appellate Court. I think, therefore, that the judgment and decree passed by the lower Appellate Court ought to be set aside and the decree of the Munsif restored. The respondents will pay to the appellants their costs in all Courts.