
(1929) 02 AHC CK 0057
In the Allahabad High Court

Gayadin Singh and Others

APPELLANT

Vs

Kalka Singh and Others

RESPONDENT

Date of Decision : 05-02-1929

Acts Referred:

Citation : (1929) 02 AHC CK 0057

Hon'ble Judges : Dalal, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Dalal, J.—This matter in dispute here is whether a certain alleged statement in Court, which statement has been weeded out, may be taken as an acknowledgment of liability as mortgagee by the person who made the statement. The acknowledgment is sought to be proved u/s 19, Lim. Act, in order to extend the period of limitation which had expired at the date of the institution of the suit for redemption from the date of the mortgage, 13th June 1856. Both the subordinate Courts have held that statement was in writing and signed by Sheo Nandan Singh. Those findings are binding here. Both the subordinate Courts have held the statement to be a sufficient acknowledgment of Sheo Nandan's liability to be redeemed at the time in 1884.

2. The question is of considerable difficulty because the statement is not before the Court, and the circumstances under which the statement was made and the exact words cannot be gathered from the oral testimony and from the judgment of the settlement Court which is still in existence. It appears, however, that Sheo Nandan Singh's contention at the time was that he was a tenant of the fixed-rate holding, and that the applicant (one Jaglal) had no right to be recorded as a mortgagor. In the result the applicant Jaglal was not recorded as a mortgagor. Reference should be made to the pedigree given at the commencement of the judgment of the lower appellate Court. Ram Sahai was the mortgagor, and he had mortgaged the holding usufructually to certain money-lenders whose names it is not necessary to record. After the death of Ram Sahai his cousin, Durga

redeemed the mortgage in the lifetime of Ram Sahai's widow, Mt. Lachminia and took possession. Durga appears to have acted on behalf of himself and his brother. Sheo Nandan was the brother's son of Durga. In 1884 Jaglal, who was in the same degree of relationship through males with Ram Sahai as Durga was, applied to the settlement Court to be recorded as a mortgagor and Sheo Nandan, and Lachhman, the son of Durga, to be recorded as mortgagees. Sheo Nandan put in an appearance and contested that he was the principal tenant and that the applicant had no right. This defence of Sheo Nandan is recorded in the judgment in the following words:

Ram Sahai Singh, the original tenant, was related to me as uncle. He twice mortgaged the cultivated holdings to Balak Sahai and Sheo Ratan Sahai. But after his death my uncle Durga Singh paid the mortgage money to the mahajans and entered in possession thereof. All the cultivated holdings in dispute have ever since been in our possession. They may be recorded as holdings in our cultivation" (Hamari kashtkari likhi jawe).

3. The question in issue was what record was to be made in the papers at the time of settlement as regards this fixed-rate tenancy holding and the defence of Sheo Nandan was an assertion of full tenancy rights in denial of the mortgage alleged by the applicant Jaglal. So far there was no admission of liability of any mortgage but rather a denial thereof on the part of Sheo Nandan. Then follow these words in the judgment:

In his examination he admitted that he did not get the mutation of names effected because he held possession as mortgagees.

4. This sentence is relied upon as giving in effect the substance of the acknowledgment of liability made by Sheo Nandan. The word "admitted" indicates that this was something which was forced out of the mouth of Sheo Nandan in cross-examination, and the mortgage was mentioned only as a reason for certain action not taken by Sheo Nandan. When all along there was a denial of any right of redemption on the part of Ram Lagan, I am not prepared to hold that this statement amounted to an acknowledgment of liability as mortgagee and of Ram Lagan's right to redeem, when the extract statement is not before the Court nor is it clear whether the settlement officer correctly interpreted what Sheo Nandan said in that connexion. It is significant that the settlement officer finally continued the entry of mortgagor in the name of a deceased person and did not substitute the name of Jaglal applicant who desired such substitution.

5. Dr. Katju on behalf of the respondents quoted various rulings, but in all those cases the actual acknowledgment was before the Court, and the question was really of the interpretation of a matter which was certain. There may be an admission of mortgage in a written statement filed by the mortgagee as in *Indrapal Singh v. Mewa, Lal* [1914] 36 All. 264, or one in a Record-of-Rights prepared at the time of settlement which was signed by the mortgagee and contained a description of the mortgagee as a mortgagee as in *Daia Chand v.*

Sarfaraz [1875] 1 All. 117 (F.B.), or a description of themselves as mortgagees in a plaint in a suit for arrears of rent as in *Kamla Devi v. Gur Dayal* [1919] 17 A.L.J. 330, or an admission in a signed list of property describing the property as subject to a mortgage as in *Sanwal Das and Others Vs. Saiyid Ali Madhi and Others*, . I have not been referred to any case where doubt may exist as to what the person in possession stated and under what circumstances and with what intention. In this case there is entire conflict between the alleged acknowledgment of liability and the whole case of *Sheo Nandan* in denial of any existing right of any mortgagor to redeem him. It was held in *Khiali Ram v. Taik Ram* [1916] 38 All. 540, that the acknowledgment of liability must be in unequivocal terms. Their Lordships quoted from the case of *Dharma Vital v. Govind Sadvalkar* [1884] 8 Bom. 99.

The intention of the liability is manifestly to make an admission in writing of an existing jural relation of the kind specified equivalent for the purposes of limitation to a new contract; but for this purpose the consciousness and intention must be as clear as they would be in a contract itself, and no one could pretend that a contract to buy land awarded by a particular decree was an admission of the particulars of the judgment. The reference would be merely a means of defining the things bargained for, and here the reference was merely a means of defining the thing delivered.

6. Applying this principle their Lordships refused to consider as an acknowledgment of liability a description of the property in a dakhlanamah as a mortgage. In *Mt. Sham Devi Vs. Bhagwat Dayal* , a learned Judge of this Court insisted that an acknowledgment of liability should be a conscious acknowledgment. According to the learned Judge there should be evidence that the maker of the statement thought and believed that he was liable to be redeemed on the way of making the statement. In this particular case the belief of *Sheo Nandan* was the other way about that he was not liable to be redeemed by *Jaglal* at the time his statement was recorded in the settlement Court.

7. I hold that the statement did not start a fresh period of limitation under the provisions of Section 19, Lim. Act. I set aside the decrees of both the subordinate Courts and dismiss the plaintiffs' suit with costs of all the Courts.