
(1915) 06 AHC CK 0020
In the Allahabad High Court

Kalyan Das and Others

APPELLANT

Vs

Ashraf Ali

RESPONDENT

Date of Decision : 04-06-1915

Acts Referred:

Citation : (1915) ILR (All) 585

Hon'ble Judges : Henry Richards, C.J.;Tudball, J;Rafiq, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Henry Richards, C.J., Tudball and Rafiq, JJ.—This appeal arises out of a suit on foot of two mortgages, the first, dated the 7th of August, 1907, for Rs. 6,500, and the second, dated the 11th of February, 1909, for Rs. 1,000. The plaintiff claims Rs. 10,794, on foot of the two mortgages.

2. The estate of the mortgagors was taken over by the Court of Wards and a notification was duly issued, with effect from the 29th of July, 1911, u/s 16 of the Court of Wards Act, III of 1899. The mortgagees did not, in compliance with the provisions of Section 16, notify their claim under the two mortgages against the estate.

3. It appears that there was some notification of one of the mortgages in October, 1912. This, however, may, for the purposes of our judgment, be disregarded. The estate is not now and was not at the time of the institution of this suit under the management of the Court of Wards. The management was given up in November, 1912. The court below has given the plaintiffs a decree for the full amount of the claim.

4. In appeal it is contended that the plaintiffs having failed to produce their documents before the Collector, the same are inadmissible in evidence, having regard to the provisions of Section 20. Of course if the plaintiffs "are unable to adduce their mortgage-deeds in evidence they cannot sustain their suit. On the other hand it is contended that Section 20 only applies to the case of persons

who have notified their claims under the provisions of Section 16 but have, failed to produce their documents. It seems to us that the latter contention is clearly corral. Section 17 of the Act provides that, notwithstanding the provisions of the section, any person who has a claim, whether it be allowed or disallowed by the Court of Wards, is entitled to institute a suit, and that notwithstanding that the claim has not been notified. It may possibly be said that this provision only applies to the matters mentioned in the earlier part of the same section. But Section 18 makes the matter abundantly clear. In Section 18 the penalties for not notifying a claim are set forth. Interest is to cease to run from the date upon which the claim should be notified. Clause (2) provides that all claims not notified are postponed to all claims that have been notified. If Section 20 applied to cases where there had been no notification, it would, practically speaking, amount to an enactment that no suit could be brought where a claim had not been notified. If no claim had been notified no documents would be produced. But the words of Section 20 themselves show that it only deals with cases where there has been a notification u/s 16. The new Act, which was not in force at the time the estate was taken over by the Court of Wards, has laid down entirely new penalties for the failure to notify. Section 18 provides as follows : "Subject to the provisions of Section 20, every claim of the nature specified in Section 17, against the ward or his property, other than debts due to or liabilities incurred in favour of the Government, which is not notified u/s 17, shall be deemed, for all purposes and on all occasions, whether during the continuance of the superintendence of the Court of Wards or afterwards, to have been duly discharged." On behalf of the appellant the case of Collector of Ghazipur v. Balbhaddar Singh (1912) 10 A.L.J. 284 is relied upon. At page 242 of the Judgment there is the following passage : "It was suggested that the obligation to produce documents is laid upon creditors who notify their claims. The argument is that a creditor who does not notify his claim at all may make himself liable to the provisions of Section 18 already quoted, but cannot be held liable to the further disability laid" down by Section 20. There is nothing in the wording of the Act to support this contention, indeed it appears contrary to the clear intention of the provisions under consideration." We cannot agree with these remarks. It seems to us that the wording, of the Act shows that the contention is correct.

5. The only question which remains is the question of the amount of interest allowed. This is a point which is not taken in the memorandum of appeal. We think, however, that we ought to give effect to the clear provisions of Section 18. This provides that every claim, save as in the section mentioned, shall cease to bear interest from the date of the expiry of the period prescribed by this section. It is true that one of these mortgages was not payable for a period of five years. It was, however, nevertheless a "claim" against the estate, and we think that under the provisions of the section it ceased to bear interest from the 29th of January, 1912, that is to say six months after the notification. At the same time we think that the plaintiffs ought to have their costs proportionate to their success in both courts, the point not having been taken in the memorandum of

appeal to this Court.

6. We accordingly vary the decree of the court below by directing that interest shall be disallowed on both mortgages from the 29th of January, 1912, up to the date of the institution of the present suit. From that date the plaintiffs will have simple interest at the rate of 6 per cent per annum up to the date of payment. We extend the time for redemption for a period of six months from this date.