
(1895) 04 AHC CK 0003
In the Allahabad High Court

Lalta Prasad

APPELLANT

Vs

Ram Ratan and Others

RESPONDENT

Date of Decision : 03-04-1895

Acts Referred:

Citation : (1893) ILR (All) 483

Hon'ble Judges : John Edge, J; Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Edge, Kt., C.J. and Banerji, J.—The suit in which this appeal has arisen was brought in the Court of the Subordinate Judge of Moradabad. It was a suit for sale u/s 88 of Act No. IV of 1882. A very small portion of the property mortgaged, viz., 50 square yards, was situate in the district of Moradabad. It is said, but we need not decide the point, that those 50 yards only existed in imagination, and were entered in the bond to give the Court of Moradabad jurisdiction and to allow of registration in that district. The other portion of the property mortgaged by that bond was in the Tarai district under the Government of the Lieutenant-Governor of these "Provinces and within the district to which, at the time when the mortgage was made and this suit was brought, Regulation No. IV of 1876 applied. The Subordinate Judge passed a decree for sale, not only of the Moradabad property, but also of that portion which was in the district of the Tarai.

2. The defendants who have appealed here were purchasers subsequent of the mortgage of the mortgaged property in the Tarai district. The other defendants have not appealed. Pandit Sundar Lal, on behalf of these defendants-appellants, has contended that the Court of Moradabad had no jurisdiction to entertain the suit, so far as it related to the property in the Tarai district. He also contended that so far as the property in the Tarai district is concerned the suit is barred by twelve years" limitation by Rule 3 of Chapter I of the schedule to Regulation No. IV of 1876. On the other hand Mr. D.N. Banerji, for the plaintiff-respondent,

contended that Section 19 of Act No. XIV of 1882 gave the Court of Moradabad jurisdiction to entertain the suit as brought.

3. By Section 3 of Regulation No. IV of 1876 it is enacted that the Tarai district shall not be subject (a) to the jurisdiction of the Courts of civil judicature constituted by the Regulations of the Bengal Code and by the Acts passed by the Governor-General in Council.

* * * * (c) to the system of procedure prescribed by the said Regulations and Acts for the said Courts of civil judicature.

(d) to the civil jurisdiction of the High Court for the North-Western Provinces.

4. By Section 1 of Act No. XIV of 1882 the application of Act No. XIV of 18821 is excluded from the scheduled districts as defined in Act No. XIV of 1874. The Tarai district in question is one of those scheduled districts. Now the only section which could have given the Court at Moradabad jurisdiction to entertain the suit so far as it related to the property in the Tarai district, if it had not been for Section 1, was Section 19 or Section 24; but as Section 19 only applies where the immovable property is situate within the limits of different districts, we have to see whether "district" has a special meaning when used in that section. For that purpose we must turn to Section 2 of Act No. XIV of 1882, and there we find "district" defined; but that section is one of the sections which by Section 1 are excluded from consideration when dealing with a question in a scheduled district. Consequently in our opinion Section 19 could not give the Court at Moradabad any jurisdiction to entertain a suit relating to immovable property in the Tarai district.

5. We do not intend to decide the question of limitation, but we merely say this, that if the Court at Moradabad had jurisdiction to decree a sale of this property in the Tarai, this anomaly would arise; it might be that so far as the Court at Moradabad was concerned the limitation in that Court for a sale of property would, under Article 147 of Schedule ii of Act No. XV of 1877, be sixty years, whereas if the suit had been brought in the Court of the Tarai district, the limitation would, by reason of Rule 3 of Chapter I of the schedule of Regulation No. IV of 1876, be twelve years. We say we do not decide what would be the limitation applicable in the Court of Moradabad so far as it relates to the property in the Tarai. That is by no means an easy question, but we are not called on to decide it.

6. We decree this appeal in so far as the decree of the Court below was a decree for sale of the property in the Tarai and in so far as these appellants, are concerned; and in so far as these defendants-appellants and the property; in the Tarai are concerned, we dismiss the suit with costs.