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(1926) 03 AHC CK 0002

In the Allahabad High Court

Misra Mendai lal and Others — APPELLANT

Vs

Dularey lal and Others — RESPONDENT

Date of Decision : 17-03-1926

Acts Referred:

Citation : (1926) 03 AHC CK 0002

Final Decision : Dismissed

Judgement

1. In the lower Court this was a suit for recovery of Rs. 32,427, being "principal and interest alleged to be due under a mortgage-bond, dated the 23rd of October 1902.

2. The learned Subordinate Judge came to the conclusion that he would have to eliminate all calculation of interest on the principal sum of Rs. 12,000 between the 23rd of October 1902 and the corresponding date in the year 1909, that is to say, for a period of 7 years. He held that in consequence of the special terms of the document the interest between those dates was time-barred. This indeed is the only point in the appeal, and if the appellants are successful they are entitled to have the decree, which was passed for Rs. 24,600 increased by Rs. 7,827.

3. The text of the mortgage-deed will be found at page 29 of the record, and the point which arises for consideration is whether the mortgagees were under the circumstances bound to bring a suit for interest within 12 years from the date of the mortgage, or if they failed to do that whether the interest could only be calculated from 12 years prior to the suit. The clause which has given rise to the contention is to be found at page 30, commencing with line 35. The mortgage was to be for a period of 10 years. "It is covenanted that we shall redeem the aforesaid property at the end of the stipulated period on payment of the said sum with interest at the rate of 8-annas per cent, per month, calculated from the date of the execution. We shall continue to pay the interest in a lump sum every year. If interest for any year is not paid and the whole or any portion of the interest remains due with the consent of the mortgagee then that amount shall, at the end of the year, be added to the principal and we shall pay interest on that

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amount also at the aforesaid rate. Similarly the entire amount of interest and compound interest remaining unpaid shall be added to the principal and shall also carry interest at the rate of 8-annas per cent, per month, or the mortgagee may preserve the mortgage-money, bring a suit for interest only and realise the amount by enforcement of hypothecation lien against our property." When this matter came up for discussion in the Court of the learned Subordinate Judge, he was referred to the case of Gaya Din v. Jhuman 28 Ind. Cas 940 : 37 A. 400 : 13 A. L. J. 510, That was a case which came up before three Judges and Mr. Justice Banerji dissented. But the view that was taken in considering the question of limitation was that the test which one has to apply is the obligation which the borrower Lab taken upon himself by his signature to the written document and it was held that in this instalment contract the particular claim was time-barred. The learned Subordinate Judge in fact followed that Full Bench ruling. But it happened that on the 3rd of July 1922 a Full Bench consisting of five Judges of this Court had to determine a case which is indistinguishable, from the present one, and in that case the decision of the two Judges in the case of Gaya Din v. Jhuman 28 Ind. Cas 940 : 37 A. 400 : 13 A. L. J. 510, was affirmed, and it was hold that limitation began to run against the mortgagee from the date of the first default in payment of interest and, therefore, on the particular facts of that case the suit was time-barred. Here we arc of opinion that we have to apply precisely that same principle, and that the learned Subordinate Judge following the case of Gaya Din v. Jhuman 28 Ind. Cas, 940 : 37 A. 400 : 13 A. L. J. 510, arrived also at the right conclusion. On the proper construction of the clause in the mortgage-deed, which we have read, and applying to it the principle either of Gaya Din v. Jhuman 28 Ind. Cas 940 : 37 A. 400 : 13 A. L. J. 510, or that of Shib Dayal Vs. Meharban and Others, the decision of the Subordinate Judge is in every way right, and must be affirmed. This appeal is, therefore, dismissed with costs and fees on the higher scale.

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