

(1927) 03 AHC CK 0011
In the Allahabad High Court

Mitthu Lal

APPELLANT

Vs

Deojit and Another

RESPONDENT

Date of Decision : 31-03-1927

Acts Referred:

Citation : AIR 1927 All 589 : (1927) ILR (All) 809

Judgement

1. A suit for sale was brought and a preliminary decree was passed by the trial Court on 6th December 1920. This is an appeal from the final decree. One of the mortgagors, Radhe Singh, died, and his successors-in-interest were not brought on the record within the period of limitation. It is represented that Radhe Singh was dead at the time of the passing of the preliminary decree on the 6th December 1920, and that, therefore, when the final decree was passed the amount of the decree ought to have been reduced proportionate to the share of Radhe Singh in the property. Radhe Singh's share was one-ninth, so the appeal is valued at Rs. 775, one-ninth of the amount of Rs. 6,973 entered in the final decree. In support of his contention the learned Counsel quoted the ruling in the case of Imam Ali v. Baij Nath Ram Sahu (1906) 33 Cal. 613. In that case, on account of the failure of the decree-holder to bring on the record the legal representatives of one of the judgment-debtors, the decree-holder was deprived of his remedy against part of the property ordered to be sold in execution of the decree. The learned Judges held that the decree-holder could not burden the rest of the property with the amount payable by the property against which he had lost his claim through his own negligence. The case here, however, is different. It is stated on behalf of the appellant that Radhe Singh was dead at the time of the passing of the preliminary decree, and nothing has happened subsequent to that decree which would entitle the appellant to ask for a reduction of the amount fixed in the preliminary decree. This objection as to the reduction of the amount due on the mortgage should have been put forward at the time the preliminary decree was passed. At the time of the preparation of the final decree the amount fixed in the preliminary decree cannot be altered except for some reason or some event which may have happened subsequent to the preliminary decree. We are,

therefore, of opinion that grounds Nos. 1 and 2 of the appeal fail and the amount entered in the final decree cannot be reduced.

2. The third ground of appeal was added on the 8th of February 1927. On that date it is admitted that the new plea raised in that ground of appeal was time barred. It is argued, however, that this fresh ground was added with the permission of this Court after arguments on both sides were heard. On that day the plea of limitation was not raised and no decision was arrived at by this Court. A plea of limitation can be raised at any moment prior to the decision of the appeal, and we think that the respondents' counsel, Mr. Naraian Prasad, is entitled to raise the plea though the fresh ground of appeal was added with the permission of this Court. As that ground of appeal was barred by limitation on the date on which it was added, we are of opinion that it cannot be argued to-day.

3. In the result we dismiss this appeal with costs which shall include fees here on the higher scale.