(1931) 01 AHC CK 0041

In the Allahabad High Court

Mufassil Bank Ltd. APPELLANT

Vs

Molvi Subhan Ullah and Others RESPONDENT

Date of Decision : 21-01-1931

Acts Referred:

Citation : AIR 1931 All 427

Hon'ble Judges : Sen, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sen, J.—This is an application for revision u/s 115, Civil P. C., and arises out of certain proceedings in a suit for redemption of a mortgage. On 23rd October 1918, Mt. Saghir-un-nissa in consideration of Rs. 2,500 made a usufructuary mortgage of the property in dispute in favour of a company known as the Salt Company. This Salt Company became subsequently amalgamated with the Mofussil Bank Limited.

2. In 1926, Mt. Saghir-un-nissa made a simple mortgage of the same property in favour of Hansraj Saithwar. She sold her equity of redemption to Moulvi Subhan Ullah. Hansraj brought a suit for redemption of the mortgage deed dated 23rd October 1918, and impleaded the Mufassil Bank, the Salt Company, Mt. Saghir-un-nisa and Subhan Ullah as defendants.

3. A preliminary decree was passed under Order 34, Rule 7 on 30th April 1927. An application was made for the grant of a final decree on 22nd December 1927, and a final decree was obtained on 31st March 1928.

4. The preliminary decree provided that the property was to stand redeemed if the plaintiff Hansraj paid Rs. 11,976-8-0 to the Mufassil Bank on or before 30th October 1927, but that if the plaintiff failed to pay that amount within the time indicated, the plaintiff was to lose his right of redemption. In the final decree which was passed, it was provided that on plaintiff''s failure to pay the amount, the mortgaged property was to be sold.

5. The final decree against Subhan Ullah was ex parte. An application was made to set aside this decree but it was dismissed as time barred. Subhan Ullah preferred no appeal from the final de-decree; and upon the expiry of the period for appeal, that decree became final and conclusive between the parties.

6. In the action as originally brought, Subhan Ullah and the Mufassil Bank Limited were ranged on the same side as defendants, When Hansraj did not deposit the amount as directed in the decree, the Mufassil Bank came forward with an application for the grant of a final decree. Subhan Ullah did not oppose this application and as we have seen, the final decree was passed against him exparte.

7. On 19th January 1929, Subhan Ullah made a curious application purporting to be made under Sections 151 and 152, Civil P. C. He contended that the two decrees preliminary and final were at variance in essential particulars and that the Court had exceeded its powers in directing a sale of the property, in the event of Hansraj not paying the decretal amount to the Mufassil Bank. The City Munsif of Gorakhpur has, by his order of 6th April 1929, allowed this application:

The result is that I allow application under Sections 151 and 152 and quash the proceedings taken so far under the final decree and direct the decree-holder to apply for necessary correction of the decree. Execution will be taken out de novo.

8. The Mufassil Bank has applied to this Court for the revision of this order. The judgment of the Court below is a confused jumble of facts and law. The Court has not considered at all the provision of Order 34, Rule 8, Sub-clause (3), under which it was open to a defendant to ask upon the happening of the contingency as has happened in this case, that the mortgaged property or a sufficient part thereof be sold. The Court below has not paid any regard to the fact that the right referred to above, is independent of the terms in which a preliminary decree for redemption should ordinarily be cast.

9. The Court below has assumed that the variation in the terms of the final decree must be treated as merely clerical or arithmetical mistakes or errors arising from an accidental slip or omission.

10. We are of opinion that Section 152, Civil P. C, is wholly inapplicable. Section 15l is equally inapplicable. This section does not confer a new power in the Court but makes a statutory recognition of the inherent power of the Court to do certain things ex debit to justitiae. But the Court has no authority to annul a final decree passed in favour of a party in due process of law in the exercise of an assumed inherent jurisdiction. The Court has no inherent powers to bring about this result and the act of the Court amounts to an usurpation of authority. By lapse of time, an important right had accrued in favour of the Mufassil Bank and the Court below was not competent either to modify or annul the final decree. We were prepared to safeguard the interest of Subhan Ullah and we laid down certain conditions in our order dated 16th December 1930. Neither Mr. Muhammad Husain nor his client has appeared before us today and our

directions have not been carried out. We allow this application for revision, set aside the order of the Court below dated 6th April 1929 and dismiss the application of Subhan Ullah dated 19th January 1929 with costs both here and heretofore.

