
(1924) 05 AHC CK 0091
In the Allahabad High Court

Musammat Lakhi

APPELLANT

Vs

Murat Tewari and Others

RESPONDENT

Date of Decision : 15-05-1924

Acts Referred:

Citation : AIR 1924 All 843 : 83 Ind. Cas. 875

Hon'ble Judges : Neave, J;Daniels, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This was a suit by the, plaintiff Musammat Lakhi for the recovery of money paid on behalf of the defendants under Article 61 of the Limitation Act. The defendants contended that Article 61 was not applicable, and that the cause of action arose much earlier and was barred under Article 116. The Trial Court held the claim to be within time; the lower Appellate Court has dismissed it. The question of limitation is the sole question to be decided in this appeal.

2. The plaintiff, Musammat Lakhi, is the mother of Jagdeo Ram, the original owner of certain zemindari property which he mortgaged to Ram Pat for a sum of Rs. 3,600, on 27th May 1904. The only portion of the consideration money with which we are now concerned is a sum of Rs. 100 which was left with the mortgagee for payment to one Ram Prasad under a hypothecation bond dated 6th August 1899. The bond in question was primarily a usufructuary mortgage of certain sir plots for the sum of Rs. 100, but it was agreed in the deed that if possession was not given to Ram Prasad, interest should run on the amount advanced and a one-anna share out of the zemindari property should stand hypothecated to secure re-payment of the advance with interest. Possession of the sir plots was not given to Ram Prasad and the zemindari share, therefore, stood hypothecated in his favour. On 2nd August 1905 Nakchhed, the predecessor-in-interest of the defendants-respondents, obtained a pre-mortgage-decree in respect of the mortgage to Ram Pat. By that decree he stepped into the shoes of Ram Pat and became liable for the payment of the sum of Rs. 100 to

Ram Prasad. Neither the original mortgagor nor Nakchhed paid this amount. On 30th August 1911 Ram Prasad got- a decree for sale of a one anna share for a sum of Rs. 441-3 which was by that time due to him. The decree was passed jointly against (1) Musammat Jagdei, the wife of Jagdeo, and (2) the heirs of Nakchhed. Musammat Jagdei subsequently died, and the property passed to Jagdeo Ram's mother, the present plaintiff. Ram Prasad having taken steps to enforce his decree by sale of the mortgaged property, the plaintiff on 27th August 1916 paid up the amount due, which had by this time amounted to Rs. 608, and on 17th June 1919, within three years of that date, but more than twelve years from the original mortgage and the pre-emption decree in favour of Nakchhed, she brought the present suit to recover this amount from the defendants. The Subordinate Judge who tried the suit came to the conclusion that Rs. 425-9 out of this amount was due from the defendants, and it is not now disputed that, if her suit is within time, this is the amount which the plaintiff is entitled to recover.

3. It appears to us that the fact of a joint decree having been passed against the parties, which the learned Judge has treated as of no importance, is the governing feature in the case. As soon as the plaintiff satisfied those decrees she became entitled to contribution from the defendants. Limitation is, therefore three years under Article 99 from the date when the decrees were satisfied and the suit was within time. The amount to which the plaintiff is entitled to be reimbursed has been worked out by the learned Subordinate Judge, whose decision on the point is not disputed.

4. We, therefore, allow the appeal with costs of the higher scale and setting aside the decree of the Court below restore that of the learned Subordinate Judge.