

(1913) 02 AHC CK 0037
In the Allahabad High Court

Parsotam Das and Others

APPELLANT

Vs

Patesri Partab Narain Singh and Others

RESPONDENT

Date of Decision : 18-02-1913

Acts Referred:

Citation : (1913) ILR (All) 250

Hon'ble Judges : Henry Richards, J; Banerji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Henry Richards, Kt. C.J. and Banerji, J.—This appeal arises out of a suit for sale upon a mortgage, and the only question we have to determine is whether the court below was right in dismissing the claim in so far as it sought to bring to sale the village Rasulpur, tappa Kadar. The court below has held that having regard to the provisions of Section 21 of the Registration Act of 1877 the registration of the mortgage deed as regards that village was void and it has accordingly dismissed the claim in respect of that village. The correctness of this decision is challenged in this appeal by the plaintiffs.

2. The mortgage comprises a number of villages, among which is the village Rasulpur, and it is thus described in the deed. "The entire mauza Rasulpur, tappa Padya,... pargana and district Basti... which are mortgaged with possession to other persons". Mauza Rasulpur is not in tappa Padya, but is in fact in tappa Kadar. This is established by the evidence to which the court below has referred, but it is admitted that it is situate in pargana Basti and in the Basti district, and it was also mortgaged with possession to other persons. The court below holds that as the tappa in which the property in question is situate has been wrongly given in the mortgage deed, the registration of that document is thereby vitiated. Section 21 of the Registration Act merely provides that a non-testamentary document relating to immovable property should contain a description of such property sufficient to identify the same, and the appendix to the Registration Manual requires that the name of the village, pargana and district should be

entered. In the present instance the name of the village and the names of the pargana and the district in which it is situate are given in the mortgage deed. The only defect is the mistake in the name of the tappa. The fact that it is further mentioned in the mortgage deed that the mortgaged property is subject to a prior mortgage under which the mortgagee is in possession is another circumstance which would enable one to identify the property intended to be mortgaged and mentioned in the mortgage deed. We are unable to hold that the mistake in the tappa is alone sufficient to vitiate the registration of the document which was accepted for registration and actually registered. The description given, in spite of the error in the tappa, was in our opinion sufficient to identify the property and that part of the description which was in fact erroneous may well be disregarded.

3. A similar question arose in *Beni Madho Singh v. Jagat Singh* (1912) 10 A.L.J. 33 and it was held that a sale deed having been registered, the registration could not be a nullity merely by reason of there being an error in the description of the property. The court below was, therefore, in our opinion wrong in dismissing the claim as regards the village Rasulpur.

4. It was contended on behalf of the respondent, Kashi Prasad, that he was a bond fide purchaser without notice of the plaintiff's earlier mortgage. In the first place we may point out that the property was sold and was purchased by Kashi Prasad in execution of his own decree. In the next place there is nothing to show that he made any inquiry as to the existence of a prior mortgage on the property. If he had made any inquiry, it is clear that he would have found that the property which is mentioned in the mortgage deed in suit as being in the possession of a prior mortgagee is the property now sought to be sold. He never came forward to say that he was misled in any way by the misdescription in the mortgage deed. The plaintiff, therefore, is entitled to a decree for sale of Rasulpur as against the respondent Kashi Prasad.

5. It was contended on behalf of the respondent Hira Prasad that the decree for sale of Rasulpur in favour of the plaintiff should be subject to two prior mortgages, namely, one of July, 1880, and the other of the 25th of November, 1880. The mortgage of the 2nd of July, 1880, is a usufructuary mortgage made in favour of Ram Narain and others, and the other mortgage is a simple mortgage in favour of Sham Narain and others, the predecessors in title of Hira Prasad. Hira Prasad has purchased the mortgagee rights in regard to half of the property and has redeemed the mortgage in respect of the other half and has thus stepped into the shoes of the prior mortgagee. He is, therefore, entitled to claim that the decree in the plaintiff's favour should be subject to the mortgage of the 2nd of July, 1880. This is conceded by the learned advocate for the plaintiff, and indeed in the plaint the plaintiff's prayer was that the sale should be subject to that mortgage. As for the mortgage of the 25th of November, 1880, the court below has held that, as a decree was obtained on the basis of that mortgage, the said mortgage has merged in the decree and that the decree has

become time-barred and is no longer capable of execution. So that Hira Prasad cannot now claim that the sale in enforcement of the plaintiff's mortgage should be subject to the mortgage of the 25th of November, 1880. In the connected execution First Appeal, No. 303 of 1912, decided by us to-day, we have held that the decree obtained on foot of the mortgage of the 25th of November, 1880, is no longer capable of execution and is time barred and it is clear that it was also time-barred on the date on which the plaintiffs brought their suit. That being so, that mortgage no longer subsists and cannot be enforced.

6. The result is that we allow the appeal so far that we vary the decree of the court below by adding to the decree a direction for sale of the village Rasulpur, tappa Kadar, subject to the mortgage of the 2nd of July, 1880. The appellants will have their costs in both courts as part of the decretal amount which may be recovered by sale of the village Rasulpur and the other villages ordered to be sold by the decree of the court below. In other respects we affirm the decree of the court below. We extend the time for payment for six months from this date.