

(1929) 04 AHC CK 0015
In the Allahabad High Court

Prohit Basant Lal and Another

APPELLANT

Vs

Basanti and Others

RESPONDENT

Date of Decision : 30-04-1929

Acts Referred:

Citation : AIR 1929 All 551 : 117 Ind. Cas. 102

Judgement

1. This is a short appeal and is on behalf of two of the several defendants in the suit. The suit was based on two mortgages. A preliminary decree was made in the Court of first instance, and an appeal was lodged in this Court. The appeal was decided on 17th July 1922. Within three years of the decision of the appellate Court, on 16th July 1925 the plaintiff applied for the making of a final decree for sale. To this application certain objections were taken by some of the judgment-debtors, partly with success. By an order, dated 30th January 1926, the learned Subordinate Judge directed that a final decree in terms of the final decision of the High Court be prepared. In this Court it is urged that property, item 17 in the final decree, prepared by the Court below (see p. 54) was omitted from the application of the plaintiff, which is printed at p. 46. It is urged that, as the plaintiff herself failed to apply for the sale of this property, there should not have been a final decree ordering its sale. The learned Counsel for the appellants with all fairness, has pointed out to us that, on 30th January 1926, the Court asked the plaintiff's counsel if it was his intention to omit any property from the final decree for sale. His reply was that he did not intend any omission. Thereupon, the learned Judge ordered that all the property should be sold. The learned Counsel for the appellants contends that as there is no application for the sale of this (item 17 on p. 54 of the record) made within three years of the passing of the High Court's decree there should not have been any decree for the sale of this property.

2. We are of opinion that there is no substance in this argument. The plaintiff was not at all bound to describe, in his application, what were the properties with respect to which he was going to ask for a final decree for sale, unless, of course, it was his intention that any particular property should be definitely omitted from

the order. The appeal, therefore, fails on this point. Mr. Haribans Sahai has told us that, having considered the merits of the case, he does not think it necessary to urge the other pleas taken in the memorandum of appeal. Mr. Malaviya, on behalf of his client Mt. Asharfi Devi who is one of the respondents, tells us that his client is the only legal representative of Mt. Basanti, the original plaintiff. We find that a number of people have been brought on the record at the instance of the appellants as the legal representatives of Mt. Basanti. We do not decide who is the party who ought really to be allowed to represent the deceased. In the result, the entire appeal fails and is hereby dismissed with costs.