
(1959) 12 KAR CK 0018
In the Karnataka High Court
Case No : Second Appeal No. (B) 158 of 1956

Raghoba Santanna Naik

APPELLANT

Vs

Shaba Nalo Naik and Another

RESPONDENT

Date of Decision : 03-12-1959

Acts Referred:

Limitation Act, 1908 — Section 19

Citation : AIR 1960 Kar 187 : (1960) ILR (Kar) 568

Hon'ble Judges : K.S. Hegde, J

Bench : Single Bench

Judgement

(1) The true scope of S. 19 of the Limitation Act arises for consideration in this case.

(2) The facts relevant for the purpose of deciding the question of law that has been argued before me are; the first defendant executed a simple mortgage in favour of the plaintiff on 28-7-1925 as per Ex. 1 for a sum of Rs. 700/-. in that mortgage deed, he included ten items of properties; a period of 2 years was fixed for the payment of the principal amount; in other words the principal amount was due on 28-7-1927; on 3-3-1938, the mortgagor (defendant 1) sold items Nos. 4, 5, 6, 8 and 9 to the second defendant; after selling those properties to the second defendant, the first defendant renewed the mortgage under Ex. 1 as per Ex. 34 on 24-7-1939; in the renewal also he included all the ten items of property which was originally included in Ex. 1.

The present suit is brought on the basis of Ex. 34 and the same was instituted on 16-10-1946. It is clear that the claim arising under Ex. 1 was barred by limitation by the time the present suit was instituted. The only question for consideration is whether because of the acknowledgment made in Ex. 34, the plaintiff can bring a suit against all the ten items of property which had been included in the mortgage deed. The defendants contention is that the suit in question is not sustainable as against the items of properties sold to him. Both the courts below upheld the contention of the defendants and dismissed the

plaintiff's suit as against properties sold in favour of the second defendant.

(3) As regards the true effect of S. 19 of the Limitation Act, there was divergence of judicial opinion till the decisions of the Privy Council in *Bank of Upper India, Ltd. v. Skinner* AIR 1942 PC 67. In that decision Their Lordships laid down that an acknowledgment by a transferor given after the transfer of title does not bind the transferee; Section 19 only applies where the acknowledgment has been made before the transferee has derived his title from the acknowledge, and therefore acknowledgments made by the mortgagors after they had parted with all their interest to the purchaser do not bind the purchaser. In the course of their decision Their Lordships observed as follows:

"The question is whether the acknowledgment by a transferor in order to bind the transferee can be given after the transfer of title, or acknowledgment has been made before the transferee has derived his title from the acknowledgor. The matter has been frequently discussed in the Courts in India with conflicting decisions. Their Lordships have had the advantage of having the principal decisions discussed before them by counsel and have no doubt that "much can be said on both sides." It applies to every form of property movable and immovable; and it would appear strange that a man in wrongful possession of property may transfer it to a bona fide purchaser and that the latter is not quieted in his possession by the lapse of time, but may be defeated by acknowledgments made without his knowledge by the person from whom he derived title."

From this decision it is clear that any acknowledgment made by a mortgagor after having parted with the mortgage property to another person will not be valid and binding on the property transferred.

(4) Sri V. S. Malimath, the learned Counsel appearing for the appellant contends that the decision of the Privy Council in *Bank of Upper India Ltd's* case AIR 1942 PC 67 will be only applicable if the mortgagor had transferred all his interest in the mortgage property; if he had retained any interest whatsoever, then the acknowledgment is good as against the transferee. In support of his contention he cited from the decision of the Calcutta High Court in *Krishna Chandra Saha v. Bhairab Chandra Saha* ILR 32 Cal 1077. This decision was rendered long prior to the decision of the Privy Council in *Bank of Upper India Ltd's* case AIR 1942 PC 67. The contention advanced by Sri Malimath had been advanced before a Bench of the Madras High Court in the case of *Naranappa Naicker Vs. Ramalingam Pillai and Others*, . The learned Judges who president over the Bench repelled that contention and came to the conclusion that the decision, of the Privy Council is applicable also in case where a mortgagor had parted with some of the properties before acknowledging the mortgage debt. Their Lordships observed:

"But then, the word "all" in the sentence underlined (here into " ") by us may well raise the question whether if the mortgagor making the acknowledgment has an interest in the property hypothecated, in part, at any rate, his

acknowledgment will not be binding upon a prior alienee of a portion of the property. As we have already stated, our opinion is that it will not be. The sentence just extracted by us from Mitra's Commentary is founded upon the last sentence of the paragraph of the Privy Council ruling in the case just cited above at p. 691 of the report, which we have not already reproduced and that is:

"On the whole therefore their Lordships came to the conclusion that the acknowledgments made in this case by the mortgagors after they had parted with all their interest to the purchaser do not bind the purchaser; and that the High Court came to a correct conclusion on this point."

This sentence of the Privy Council judgment in our opinion, has reference only to the facts of the particular case before their Lordships, while the preceding part of the passage, as we have already quoted it, contains a discussion of principle which makes it immaterial so far as the invalidity of an acknowledgment by the mortgagor as against a prior alienee is concerned, that the mortgagor making the acknowledgment has some interest at the time in the property hypothecated.

On examining the reasons adopted by the Privy Council in the case cited, it is clear that the ratio of their Lordships' decision applies to the facts of the present case as well.

(5) In the result, the appeal fails and the same is dismissed with costs.

(6) Appeal dismissed.