

(1950) 03 AHC CK 0043
In the Allahabad High Court
Case No : Second Appeal No. 751 of 1947

Ram Narain

APPELLANT

Vs

Salig Ram and Others

RESPONDENT

Date of Decision : 29-03-1950

Acts Referred:

Transfer of Property Act, 1882 — Section 52
Uttar Pradesh Land Revenue Act, 1901 — Section 162

Citation : AIR 1952 All 298

Hon'ble Judges : Agarwala, J

Bench : Single Bench

Advocate : Baleshwari Pd, for the Appellant; M.L. Chaturvedi, for the Respondent

Final Decision : Allowed

Judgement

Agarwala, J.—This is a plaintiff's appeal arising out of a suit for possession of a house. The house in dispute belonged to Govind and Pitam. They mortgaged it with the plaintiff-appellant on 27-7-1928. The mortgage was simple. The plaintiff-appellant brought a suit in 1940 for sale of the house, on the basis of the simple mortgage. In due course, there was an order for sale and the sale was held on 17-5-1944 and was confirmed on 18-7-1944. The plaintiff himself was the auction purchaser.

2. It appears that the mortgagors were indebted to a co-operative bank. The bank realised the money due to them by sale of the house in suit. This sale took place in 1941 during the pendency of the mortgage suit. The sale was under the provisions of the Land Revenue Act because the amount due to the co-operative bank is realisable as land revenue. The defendants were the purchasers at this revenue sale. The plaintiff, could not get possession over the house under his purchase as the defendants had come into possession thereof. The defendants were not made parties in the mortgage suit. The plaintiff, therefore, filed the present suit claiming possession over the house. The lower appellate Court dismissed the suit on the ground that the sale held by the revenue authorities

resulting in the purchase by the defendants was a sale free from all charges including that in favour of the plaintiff under the mortgage of 27-7-1928.

3. In this second appeal by the plaintiff two points have been raised--one is whether the plaintiff's mortgage had been wiped off by reason of the revenue sale in favour of the defendants, and the second is whether the plaintiff was entitled to possession of the house as against the defendants or whether he should sue the defendants for sale of the property.

4. It is to be observed that although the amount due to a co-operative bank is realisable as arrears of land revenue, it was not a charge on the house which was sold. The sale was obviously held under the provisions of Section 162, Land Revenue Act. It runs as follows:

162. (1)--"If an arrear cannot be recovered by any of the above processes and the defaulter owns, or is in possession of any other mahal, or any share in any other mahal, or any other Immovable property, the Collector may proceed against such mahal, or share or other Immovable property as if it were the land on account of which the revenue is due, under the provisions of this Act:

Provided that no interests save those of the defaulter alone shall be affected by such process, and when such property is sold, the provisions of Section 161 shall not apply to such sale.

(2) Sums of money recoverable as arrears of revenue, but not due in respect of any specific land, may be recovered by process under this section against any Immovable property of the defaulter."

It is clear that when the Collector proceeds against the other immovable property of the defaulter the sale would convey to the purchaser only the right, title and interest of the defaulter in the property sold. The proviso to the section expressly states that interests of persons other than the defaulter shall not be affected by the sale. These interests include the interest of mortgagees. The plaintiff was a mortgagee of the house from before the sale. His interest, therefore, could not be affected by the sale. The property, therefore, must be deemed to have been sold to the defendants subject to the rights of the plaintiff under the mortgage of 27-7-1928.

5. If the plaintiff's mortgage was not wiped off by the sale in favour of the defendants and the defendants must be deemed to have purchased the property subject to that mortgage it follows that the defendants, having purchased the property during the pendency of the plaintiff's suit, were bound by the result of that suit under the doctrine of *lis pendens* embodied in Section 52 Transfer Property Act. The mortgage suit resulted in a sale in favour of the plaintiff. The defendants were, therefore, bound by the sale in favour of the plaintiff and they could not question it. If the defendants could not question the sale, they could not resist the plaintiff's claim to the possession of the house. The plea that the plaintiff had only a right of sale in the property as against the defendants

because they had entered into the shoes of the mortgagor cannot be availed of by them because they came into the shoes of the plaintiff during the pendency of the mortgage suit. They were, therefore, bound by the result of that suit.

6. Learned counsel has referred me to a case of *Tikam Singh v. Har Govind* 24 ALJ 718. In that case a person had taken a Taqavi loan from the Government under the Land Improvement Loans Act, Act XIX [19] of 1883. After the loan had been taken, the property was mortgaged by the debtor. After the mortgage the property was sold under Sub-section (1) Clause (c) of Section 7 of the Act, and purchased by the defendant. Sub-section (1), Clause (c) of Section 7 of the Act provided that:

"When the loan became due, it shall be recoverable by the Collector out of the land for the benefit of which the loan has been granted, as if they were arrears of land revenue due in respect of that land."

The provisions of Clause (c) clearly point to the Taqavi loan being considered as a first charge on the land for the benefit of which the loan is taken, just as the land revenue is the first charge on the land in respect of which it is due. In that case it was held that the plaintiff's sale having been held under Clause (c) of Sub-section (1) of Section 7 it was free of the mortgage which had been executed subsequent to the grant of the loan.

7. The facts of the present case are clearly different. The debt due to the co-operative bank was not a charge on the house in dispute. Its sale, therefore, could not wipe off the encumbrances which had been created by the debtor prior thereto.

8. It has been next urged that Section 233 (m), Land Revenue Act applies to the case. Section 233 (m) applies only to suits brought by the defaulter themselves and does not apply to suits brought by strangers to the sale. The view taken by the lower appellate Court was, therefore, erroneous.

9. I, therefore, allow this appeal, set aside the decree of the lower appellate Court and restore that of the trial Court with costs throughout.