(1924) 07 AHC CK 0067

In the Allahabad High Court

Sanwal Das and Others APPELLANT

Vs

Saiyid Ali Madhi and Others RESPONDENT

Date of Decision : 11-07-1924

Acts Referred:

Citation : AIR 1925 All 174

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mukerji, J.—This appeal raises two questions : First, whether having regard to the fact that the appellants were made parties to the suit for redemption after the expiry of sixty years from the date of the mortgage, the suit against them was time-barred, and secondly, whether the statement of the property sought to be sold, dated the 21st June, 1919, signed by Sanwal Das operated as an acknowledgment u/s 19 of the Limitation Act, and saved the suit from being time-barred.

2. The facts briefly are these : There was an ancient mortgage, dated the 16th July, 1859, for Rs. 1,200. The suit to redeem the mortgage was brought on 29th January, 1918. The mortgagees or some of them made a sub-mortgage of their mortgagee rights with respect to a 7 annas 81/2 pies share on 19th September, 1900, in favour of two persons Sanwal Das and Kampta Prasad. The sub mortgage was a simple one Sanwal Das and Kampta Prasad obtained a decree for sale against their mortgagors land brought the property to sale and themselves purchased on 20th March, 1920. Kampta Prasad ha3 since died. Sanwal Das, his brother Baldeo Das, Kampta Prasad''s sons and other members of the family were impleaded in the suit for redemption by order, dated the 23rd December, 1920. These are the parties who are the appellants before this Court. Three of these contested the suit and pleaded limitation among other matters. In answer to this plea of limitation the plea of acknowledgment was taken and it was further urged that the actual sale having taken place pending the suit the

question of limitation does not arise.

3. As we have stated, there are two points for decision in the case. On the first point it appears to us that the auction purchase by the appellants can be referred only to the simple mortgage they obtained on 19feh September, 1900. It is not the case that this auction purchase took place under a simple money decree and the right to the property accrued to the appellants for the first time at the date of the sale. They already had an interest in the property by the mortgage, simple though id was, dated the 19th September, 1900. We are therefore of opinion that the Courts below were not right in holding that the suit was not barred against the appellants if there happened to be no acknowledgment.

4. Coming to the second point we think that the Courts below were right in treating the statement of properties, Fard-i-Taliqa, signed by Sanwal Das, as a sufficient acknowledgment of the liability of the appellants to be redeemed. The mortgage in suit, namely, the mortgage of 1859 uses a rather peculiar word which has become almost obsolete at this date, namely, Baiul khayar in describing the nature of the mortgage. The document was a mortgage by conditional sale. The word that is generally used to denote a mortgage by conditional sale in the Vernacular is, baiul ufa or bai iniadi. In the list of properties to be sold signed by Sanwal Das he described the property 7 aunas 81/2 pies share in the village Deokali as baiul khayar. Clearly he mentioned the very expression which had been used in the mortgage of 1859. We have therefore not the least doubt in our minds that Sanwal Das in describing the property mentioned that the property was subject to the very mortgage of 1859. There is therefore no vagueness about the acknowledgment.

5. The question now is whether Sanwal Das was authorised to make an acknowledgment on behalf of the family. We have already stated that all the appellants who were in numbers were impleaded as subsequent transferees on account of the auction purchase, dated the 20th March, 1920. The purchase was made by only two persons, Sanwal Das and Kampta Prasad. It follows, as the lower Appellate Court finds, the family being a joint one, the purchase was made for the benefit of the entire family, Sanwal Das alone signed the list for himself and for his co-decree-holder and coparcener, Kampta Prasad. Evidently he was acting on behalf of the family. Such is the finding of the Court below. We hold therefore that there is a valid acknowledgment of the mortgage on behalf of the family by Sanwal Das.

6. The result is that the appeal fails and it is here by dismissed with costs which will include Counsel''s fees in this Court on the higher scale.

