

(1910) 04 AHC CK 0011
In the Allahabad High Court

Sheonandan Singh and Others

APPELLANT

Vs

Achhabar Singh and Others

RESPONDENT

Date of Decision : 02-04-1910

Acts Referred:

Citation : 6 Ind. Cas. 190

Hon'ble Judges : Richards, J;Griffin, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit to redeem a mortgage made in the year 1844. In course of time the mortgagee rights became vested either in Hira Singh or in Hira Singh and Bharat Singh jointly as members of a joint Hindu family. On the 12th of December 1881, Hira Singh transferred the mortgagee rights to the predecessor-in-title of the plaintiffs and the predecessor-in-title of the defendants. In 1906 the plaintiffs acquired the equity of redemption and they now seek to redeem the mortgage. The defendants plead limitation and undoubtedly the suit is barred unless the acknowledgment of Hira Singh contained in the deed of transfer of the 12th of December 1881, is a good acknowledgment. The defendants say that the acknowledgment is not good because on the findings of the Court below Hira Singh and Bharat Singh were joint, that the mortgage must be considered to have vested in Hira Singh and Bharat Singh jointly and that one of two mortgagees cannot give a valid acknowledgment so as to bind the other. The proposition that one of two mortgagees cannot give a valid acknowledgment is not disputed by the plaintiffs but they contend that the defendants claim under Hira Singh and represent Hira Singh and that, therefore, the acknowledgment is good. There is no doubt that Hira Singh purported to transfer not his share in the mortgagee rights but the entire mortgagee rights, and his transferees and their representatives have ever since been in possession under the transfer made by Hira Singh. Under these circumstances, we consider that the defendants are bound by the acknowledgment of Hira Singh. We, therefore, allow this appeal, set aside the decree of the lower appellate Court and restore that of the Court of first instance

with costs which in this Court will include fees on the higher scale.