

Ramchandra Laxman Vs. Balbhim Babaji

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Court : Mumbai

Decided On : Nov-17-1922

Reported in : AIR1923Bom287; (1923)25BOMLR211

Judge : Norman Macleod, Kt., C.J. and ;Crump, J.

Appeal No. : Second Appeal No. 31 of 1922

Appellant : Ramchandra Laxman

Respondent : Balbhim Babaji

Disposition : Appeal allowed

Judgement :

Norman Macleod, Kt., C.J.

1. The plaintiff sued to recover possession of the suit property as the mortgagor. The original mortgage was passed by his father to his uncle Dada acting benami for the plaintiff's father. Dada mortgaged the plaint land with possession to one Bala in 1884. Dada brought a suit for redemption in 1892 under the Dekkhan Agriculturists' Relief Act, and on taking account it was found that nothing was due under the mortgage and, therefore, a decree was passed directing that he should get possession. In appeal this decree was set aside. It was found that Rs. 310-9-0 were due to the mortgagee, and unless the sum was paid the possession was to be given back to the mortgagee. The amount was not paid and an order was made restoring the land to the possession of the mortgagee. It may be noticed that but for the erroneous order of the trial Court the land would never have got into the possession of the mortgagor. We may take it, therefore, that on the final order of the appellate Court the same effect resulted as if there had been originally a decree nisi in favour of the mortgagor, directing that if he paid Rs. 310-9-0 within the time fixed he should get possession of the property. He did not pay, and as far as one can see there is no order of the Court which could be considered to operate as a decree for foreclosure so as to put an end to the mortgage. Dada's heir Pandharinath gave up all his rights over the plaint property in favour of the plaintiff by a deed of release in 1920. The plaintiff has brought this suit for redemption. The defendants contended that the equity of redemption had been extinguished by the proceedings in the previous suit, and this contention has found favour with both the lower Courts.

2. We think that the learned Judges have not sufficiently recognized the effect of the Full Bench decision in Ramji v. Pandharinath I.L.R. (1918) 43 B.Om. 334 : 21 Bom. L.R. 56. The simple decision there was that if a mortgagor brings a redemption suit and obtains a decree nisi, which entitles him on payment of a certain sum by a certain

time to get back the property, and nothing further is done, and no attempt is made to get back possession, and no order is made barring the mortgagor's right to redeem, then a second suit can be brought for redemption and the same would not be barred either by Section 11 or Section 47 of the Civil Procedure Code, and if the facts in the present case could be brought within that Full Bench ruling, then the mortgagor in spite of the previous suit is entitled to redeem.

3. It has been suggested that if the suit is brought under the provisions of the Dekkhan Agriculturists' Relief Act, some inherent element in a decree passed thereunder prevents the Full Bench ruling being made applicable. The Chief Justice said (p. 335):

A suit for redemption under the Dekkhan Agriculturista' Relief Act is substantially a suit co have an account taken in accordance with the provisions of Section 13, and a decree for foreclosure is never passed in the first instance, or until the mortgagor has had ample opportunity of paying the sum found to be due. But in such cases Section 47 of the Civil Procedure Code might affect the plaintiff's right of suit as Chapter XXXIV of that Code would not be applicable.

4. These remarks were commented on by Mr. Justice Heaton in the same case when it returned to the Court after the decision of the Full Bench : (reported at 43 Bom. p. 477). The learned Judge was evidently referring to the last paragraph of the Chief Justice's judgment when he said that there was a disturbing element in the judgment, which was the possibility of there being under the Dekkhan Agriculturists' Relief Act a decree in a redemption suit which was not a decree nisi. Then he came to the conclusion that the decree, although it was made in a suit filed under the Dekkhan Agriculturists' Relief Act, was a decree of the ordinary kind. Here it may be said also that the decree is made under the Dekkhan Agriculturists' Relief Act, but it is a decree of the ordinary kind, and not one of the variant decrees which can be passed under Section 15B of the Act. Whether a decree made under the Dekkhan Agriculturists' Relief Act in a mortgage suit is a decree nisi or a decree which puts an end to the mortgage will always be a question for decision in each case when it comes before the Court. We think that in this case there was a decree nisi, and it comes within the Full Bench ruling. The appeal must be allowed and the case sent back to the trial Court for the hearing on the merits. The appellant to get his costs here and in the Court below. Costs of the trial Court to be costs in the cause.

Crump, J.

5. I agree. This decree on the face of it is within the Full Bench ruling in Ramji v. Pandharinath I.L.R. (1918) 43 Bom. 334 : 21 Bom. L.R. 56. and unless it can be shown that there is something in the special provisions of the Dekkhan Agriculturists' Relief Act to prevent the operation of that ruling we are bound by it. I can find nothing in the special provisions of the Dakkhan Agriculturists' Relief Act, and indeed the respondent's pleader has not specifically referred to any section, which could have the effect of altering the nature of this decree in such a way as to prevent the operation of the law as laid down in the Full Bench case. It is on the face of it a decree which does not put an end to the relations of mortgagor and mortgagee, and therefore, the present suit for redemption cannot be held to be barred.