

Ram Nath Bhuj Vs. Ram Lal Agrahri

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Court : Allahabad

Decided On : Jan-10-1946

Reported in : AIR1946All431

Appellant : Ram Nath Bhuj

Respondent : Ram Lal Agrahri

Judgement

:

ORDER

Pathak, J.

1. This is a revision against an appellate order of the Additional District Judge of Basti by which he allowed redemption of certain mortgaged property modifying the order of the learned Additional Munsif of Bansi, who allowed the application under Section 12, U.P. Agriculturists' Belief Act, filed by the opposite party to this revision against the applicant. It appears that prior to the institution of this application under Section 12, U.P. Agriculturists' Relief Act, the opposite party had filed, on an earlier occasion, another application under the same provision of the U.P. Agriculturists' Relief Act which was decided on 8th May 1942. It further appears that the mortgagor did not make the necessary deposit within the time allowed by the Court and under the terms of the order of the Court, the said application was deemed to be dismissed. The only point argued before me by learned Counsel for the mortgagee applicant in support of this revision is that the previous decision on the application under Section 12, U.P. Agriculturists' Relief Act, operated as res judicata and barred the present application which has given rise to this revision. This contention was raised before the learned Additional District Judge without success. It is reiterated before me. But I do not feel inclined to entertain it, firstly, upon the ground that a wrong decision on a question of res judicata is no ground for interference under Section 115, Civil P. G, and secondly, because I am not satisfied that the decision of the learned Additional District Judge is erroneous.

2. It is well settled that unless there is a decree involving a decision that the mortgagor's right to redeem was extinguished, such a decree cannot operate by way of res judicata so as to prevent the Court under Section 11, Civil P.C., from trying a second redemption suit : see the decision of their Lordships of the Privy Council in Raghunath Singh v. Mt. Hansraj Kunwar . I do not see any reason why this principle should not apply to applications under Section 12, U.P. Agriculturists' Belief Act. Mr. Katju has argued that Section 12, U.P. Agriculturists' Belief Act, is a special remedy created by statute and could not be availed of twice. I have examined the language of the relevant sections of the U.P. Agriculturists' Belief Act and I find myself in agreement with the argument of Mr. S.N. Verma, learned Counsel for the opposite

party, that the provisions of Section 12, U.P. Agriculturists' Relief Act, are a mere substitute for an ordinary suit for redemption. So far as the applicability of Section 11, Civil P.C., is concerned, I have not been able to appreciate the distinction between an application under Section 12, U.P. Agriculturists' Relief Act, and an ordinary suit for redemption. No injustice has been done in this case and I do not feel inclined to interfere in this revision. The result is that this revision is dismissed with costs.

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