

Shiam Lal Vs. Tehariya Lakhmi Chand and ors.

LegalCrystal Citation : legalcrystal.com/470041

Court : Allahabad

Decided On : Mar-24-1920

Reported in : AIR1920All124; 58Ind.Cas.278

Judge : P.C. Banerji and ;Tudball, JJ.

Appellant : Shiam Lal

Respondent : Tehariya Lakhmi Chand and ors.

Judgement :

1. This appeal is connected with First Appeal No. 318 of 1917 which we. have just decided. In the present appeal Shiam Lal, the original mortgagor, is the appellant before us. The plea taken on his behalf is that the suit for the mortgage having failed, a suit for a simple money decree is barred by time. The first bond is dated the 9th of September 1905 and under the conditions entered therein, the money was payable at the end of five years. There were farther conditions in respect to interest. In the case of the second bond of the 2nd of August 1903, the money was payable at the end of four years, and there are similar conditions in respect to payment of interest as in the first bond. It is urged that Article 80, read with Article 116 of Schedule I of the Limitation Act, applies and, therefore, the suit ought to have been brought on or before the 9th of September 1913. Our attention has been called to certain rulings, but not of this Court. The learned Vakil for the appellant has to admit that there are two rulings of this Court which are against him. In one of these he himself successfully prosecuted the appeal. We refer to the ease of Gaya Prasad v. Sher Ali 39 Ind. Cas. 574 : 15 A.L.J. 313 and the case of Makrand Singh v. Kallu Singh 50 Ind. Cas. 640 : 17 A.L.J. 647 : 1 U.P.L.R. (A.) 73 : 41 A. 581. He has to admit that if we follow these decisions, then his appeal must fail. Whether these decisions are right or wrong, we can see no reason whatsoever in the present case at any rate for expressing any opinion to the contrary. One of us was a party to one of these decisions and until these decisions are set aside by a larger Bench, we can see no reason why we should not follow them. In the face of these decisions this appeal must fail and we, therefore, dismiss it with costs including fees on the higher scale.