

Rohan Singh vs Badri Prasad on 15 December, 1954

Equivalent citations: AIR1955ALL254, AIR 1955 ALLAHABAD 254

JUDGMENT

Kidwai, J.

1. On 31-3-1839 a preliminary mortgage decree was passed in favour of Badri Prasad against Rohan Singh. The decree provided that the amount due was Rs. 637/11/- and then directed "the amount thus determined shall be paid into Court in eight equal six monthly instalments with interest at 31 per cent. per annum from the date of the suit till realisation. Default of payment of any instalments shall entitle the plaintiff, to put the property mortgaged to sale."

No instalment was paid but on 12-9-1944 a sum of Rs. 10/- was paid and endorsed on the back of the decree. On 13-9-1944 the decree-holder intimated receipt of payment to the Court. On 10-9-1947 the decree-holder applied for preparation of a final decree on the basis of the preliminary decree. It may be noted that the preliminary decree had been amended, by an order, dated 6-7-1941 but neither party raised any question of limitation depending upon this amendment' in the course of these appeals.

2. The learned Munsif rejected the objections of the judgment-debtor on the question of limitation, and directed that a final decree be prepared for the entire amount of the money calculated in accordance with the preliminary decree. Rohan Singh preferred an appeal and the Civil Judge of Hardoi modified the preliminary decree passed by the trial Court. He held that the application for a final decree in so far as it related to the instalments falling due more than three years before 13-9-1944 was barred by time and they could not be included in the final decree. He accordingly directed a final-decree to be passed in respect of the last four instalments, i.e., the instalments falling due on 10-10-1941 and sub-sequent dates. Both parties have come up in appeal.

3. It is contended on behalf of Rohan Singh that it ought to have been held that the whole decretal amount fell due on the failure to pay any three instalments and the right to apply for a final decree arose as soon as there was a failure to pay three instalments with the result that the right to apply for a final decree became barred after the expiry of three years from 1-10-1940. On the other hand it was contended on behalf of Badri Prasad that the decree allowed a choice to the decree-holder either to sell the property on default of three instalments or to wait till a later period before applying for a final decree. In the present case the decision of both these points is covered by a decision of a Bench of the Chief Court of Oudh reported in -- 'Ram Dutta v. Mahpal Singh', AIR 1938 Oudh 112 (A), in which it was laid down, after a consideration of the law on the subject including a Full Bench decision of the Allahabad High Court, a Privy Council decision and certain earlier decisions of the Oudh Chief Court that in such a case the final decree would be for the instalments which fell due within three years of the date of the application. This case was followed by a Single Judge of the

Allahabad High Court reported in

-- 'Buttan Singh v. Sakal Raj Singh', AIR 1945 All 161 (B).

4. It is true that a different view has been taken by a Bench of the erstwhile Allahabad High Court reported in -- 'Mt. Bhagwati v; Sant Lal', AIR 1946 All 360 (C), but that case makes it clear that the decree in that particular case specifically directed that on default of three instalments the whole of the amount would become due. Their Lordships considered that these words were imperative and were inconsistent with any option having been given to the plaintiff unlike the situation that would have been created, had the words used in the decree been "the creditor would be entitled to" or "the creditor would have the power to recover". In the present case the decree uses the words quoted above and there is no imperative provision in the decree that the entire decretal amount shall fall due. This case, therefore, is not on all fours with the appeals before me.

5. Reliance was also placed upon a Full Bench decision of 'the Bombay High Court reported in'

-- 'Chuni Lal Motiram v. Shivram Naguji', AIR 1950 Bom 188 (D). That case related to execution of a decree, and although the same principles would be followed if the matter fell under Article 131, Limitation Act, nevertheless there was a difference between the decrees in the two cases, and in that particular case the learned Judges of the Bombay High Court without any reference to the two cases, one of Oudh and one of Allahabad, to which I have referred, came to the conclusion that limitation for the execution of the decree began to run from the date that the decree-holder first acquired the right to apply and that he could not wait till a later period before he applied. I have said that the two decisions of the predecessor Courts fully cover the point before me and I am bound by these decisions, one of which is a Bench decision. With all respect, therefore, to the learned Judges of the Bombay High Court I cannot accept their View in preference to the view of the Oudh Chief Court and the erstwhile Allahabad High Court.

Having regard to the two cases to which I have referred both these appeals fail and are dismissed with costs.