

Ram Prasad And Ors. vs Suraj Bali And Ors. on 27 July, 1950

Equivalent citations: AIR1951ALL859, AIR 1951 ALLAHABAD 859

JUDGMENT

Chandiramani, J.

1. This is a plaintiff's appeal. The facts of the case are that defendant respondent 1, Suraj Bali, filed a suit for foreclosure against the plaintiffs respondents on 20-4-1936. The plaintiffs were sued as minors under the guardianship of their mother Mt. Rukmin, defendant respondent 2. A preliminary decree was passed on 7-7-1936. A final decree was obtained on 19.3.1938, and in execution of the final decree possession of the property was given to defendant 1 on 14-5-1938. In 1943 the plaintiffs filed a suit for setting aside this final decree for foreclosure on various grounds. One of them was that Ram Prasad plaintiff at the time of the filing of the suit for foreclosure was a major and not a minor and that the decree in these circumstances was a nullity against him. The other plaintiffs, who were minors at the time of the present suit and the suit for closure, alleged that their guardian had been grossly negligent in the conduct of the suit and so the decree against them was also not binding. It was also said that the final decree for foreclosure could not have been passed in view of the provisions of Section 3, U. P. Temporary Postponement of Execution of Decrees Act, X [10] of 1937 and that possession in execution of the decree was wrongly given. The plaintiffs accordingly prayed for delivery of possession over the property and for damages. The trial Court held that the plaintiff Ram Prasad was a major at the time the suit for foreclosure was filed and that the other plaintiffs were properly represented in the suit and were not prejudiced in any way. The Court, however, found that the decree was not binding on Ram Prasad. It also found that possession should not have been given in execution of that decree. The plaintiff's suit was decreed. In appeal the lower appellate Court held that the plaintiff Ram Prasad was in fact a minor at the date of the suit for foreclosure and that none of the minors had been prejudiced in that suit. It was held that Section 3 of Act X [10] of 1937 was not in fact applicable as delivery of possession as a result of the final decree for foreclosure was not in execution of that decree. The suit was dismissed.

2. The main question urged in second appeal was that Section 3, Temporary Postponement of Execution of Decrees Act, X [10] of 1937, was applicable and possession could not have therefore been delivered. When the appeal came up for hearing before a learned single Judge of the Court attention was drawn to the decision of a learned single Judge of the late Oudh Chief Court in Swami Dayal v. Durga Prasad, 1943 Oudh W. N. 481. It seemed to be the impression at that time that according to this ruling delivery of possession as a result of the decree for foreclosure was not in execution of the decree. The appeal was accordingly referred to a Bench for decision. We have heard the learned counsel and are satisfied that Section 3, Temporary Postponement of Execution of Decrees Act, applies only to execution proceedings as held in Swami Dayal v. Durga Prasad, 1943 Oudh W. N. 481. Reading the plain language of 3. 3 of the Act there can be no other conclusion. There also cannot be the least doubt that the final decree for foreclosure provides for delivery of

possession of the property and that order for possession can only be carried out if the aid of the Court is sought in execution. Clearly, therefore, delivery of possession in a final decree for foreclosure is the result of the execution of the decree. In *Swami Dayal v. Durga Prasad*, 1943 Oudh W. N. 481, it has not been held that delivery of possession in a final decree for foreclosure is not in execution of the decree.

3. Now that we have found that delivery of possession was in execution of the decree and that Section 3, Temporary Postponement of Execution of Decrees Act, applies to execution proceeding, there cannot be the least doubt that possession could not have been delivered in execution of the decree so long as the Temporary Postponement of Execution of Decrees Act was in force. In this view of the matter, the possession of the mortgagee became unlawful and the parties who were deprived of possession legitimately claimed compensation for having been kept out of possession wrongly for the period, Act X [10] of 1937 was in force. Act X [10] of 1937 was repealed by the Debt Redemption Act, No. XIII [13] of 1940, which came into force on 1-1-1941. It has been agreed by the learned counsel for the parties that the amount of damages for this period can be fairly assessed at Rs. 30. This then is the amount which the appellants should have received as compensation for having been wrongly kept out of possession.

4. The result, therefore, is that we allow the appeal only to this extent that the appellants are entitled to receive Rs. 30 as damages. Parties shall bear their own costs throughout.