

Badri Prasad vs Mata Prasad And Anr. on 11 April, 1950

Equivalent citations: AIR1950ALL663, AIR 1950 ALLAHABAD 663

JUDGMENT

Chandiramani, J.

1. This is the plaintiff's second appeal against the appellate decree of Shri S. B. Banerji, Additional Civil Judge, Partapgarh dated 9th April 1946.

2. It appears that one Raja Ram was the owner of 1/4 share of patti Mansa and 2/8- of patti Moti Lal. On 8-6-1931, he mortgaged these properties with possession to the plaintiff. Badri Prasad for Rs. 1000. On nth April 1940, Raja Ram, mortgagor sold his equity of redemption in respect of both the pattis for Rs. 15,00 to the defendants. The plaintiff filed a suit for pre-emption. His claim was decreed in respect of patti Mansa only on payment of Rs. 500 within two months from the date of the decree. The date of the decree was 30th May 1943. The plaintiff appealed to the Chief Court and the appeal was dismissed on 24th November 1943. Thereupon he deposited Rs. 500 pre-emption money in respect of Patti Mansa in the Court of Munsif Kunda on 15th January 1944. In August 1944, the defendants filed an application under Section 12 of the Agriculturists' Relief Act against the plaintiff for redemption of the properties mortgaged both in Pattis Mansa and Motilal. Certain issues were framed and immediately thereafter both the counsel of the parties told the Court that the suit be decreed for redemption on payment of Rs. 1000 by the defendants. Thereafter on 1st June 1945 the plaintiff filed a suit for declaration that he was in fact the owner of the Patti Mansa and alleged that it was by some mistake that the redemption suit had not been contested in respect of Patti Mansa and that the decree obtained under Section 12, Agriculturists' Relief Act, in respect of that patti was not binding on him. Both the trial Court and the lower appellate Court have held that there was no mistake whatever when the decree under Section 12, was granted, that the deposit of pre-emption money should have been made within two months from the date of the decree dated 30th May 1942 and not within two months from the date the Chief Court decree and as the deposit had not been made within the time allowed by the decree the plaintiff did not become the owner of Patti Mansa and in the result the plaintiff's suit was dismissed and his appeal was also dismissed.

3. It has once again been urged that it was by mistake that the compromise decree was passed and that under the law the deposit made by the plaintiff appellant was valid and that he acquired title to Patti Mansa. I have heard the learned counsel and I am satisfied that there is no force in this appeal.

4. It is obvious that the whole case of the plaintiff is based on the ground that there was a mistake on the parts of the counsel of the appellant in the suit under Section 12, Agriculturists' Relief Act, in thinking that the plaintiff had not acquired any right to Patti Mansa, Both the Courts have found that there was no mistake. If we look up Ex. A6, the statement of the counsel in the case, all that was stated there was that the suit for redemption be decreed on payment of RS. 1000 by the mortgagors.

The reasons for coming to that compromise are not stated and so there is no question of any mistake. The plaintiff sought to put the blame on his counsel Mr. Girjashankar for being under the belief that the deposit not having been made within time in the pre-emption' suit no right of ownership in respect of Patti Mansa had been acquired. In the statement, EX. A6, no reference is made to the pre-emption decree at all or to the manner in which the plaintiff acquired rights to patti Mansa. Curiously enough the plaintiff did not have the courage to produce his counsel, Mr. Girjashankar to state that he had made a mistake and fit ho to specify the nature of the mistake. There cannot, in the circumstances, be the least doubt that the question of mistake strictly did not arise at all, and there was no mistake at all. On this ground alone the appeal must fail.

5. Even on the question of law regarding the deposit made on 15th January 1944, within two months of the decree of the Chief Court it is clear that the deposit was not made within time. The pre-emption decree which granted time of two months was passed on 30th May 1942 When the appeal was filed before the Chief Court no order was obtained saying the operation of the decree nor the Chief Court when dismissing the appeal on 24th November 1943 passed any order enlarging the time of payment of the pre-emption money. Under Order 20, Rule 14 the Court at the time of passing a pre-emption decree is bound to specify a day by which the payment has to be made, unless in the decree itself any power has been reserved to extend the time for deposit of the money. In Abdul Raman v. Bankey Behari Lal, (1933) 10 C. W. N. 1151 (A. I. R. (21) 1934 Oudh 17), it was held by a Bench of the late Oudh Chief Court that:

"The Court has no jurisdiction to extend the period fixed for payment in a pre-emption decree. Section 148, Civil P. C., allows the Court discretion for enlargement of time where time is fixed for the doing of any act prescribed or allowed by the Civil P. C., and not where the time is prescribed or allowed for the doing of an act by a decree passed in a suit. After a decree has been passed, the Court becomes functus officio and is no competent under Section 148, Civil P. C., to enlarge the time fixed by a decree."

6. The learned counsel for the appellant relied on Behari Pandey v. Ramanand Pandey, A.I.R. (20) 1938 ALL. 157:(145 I.C. 591) where it was held that under Order 34, Rule 8 proviso or Section 148 Civil P.C., the Court could in redemption of usufructuary mortgage extend the time payment of the mortgage money This is a case entirely different from a pre-emption case and can be of no assistance to the appellant. The deposit certainly was not made within two months from the date of the pre-emption decree and was therefore not a valid deposit.

7. The appeal fails and is hereby dismissed with costs.