

Mewa Ram vs Phul Chand And Anr. on 22 September, 1950

Equivalent citations: AIR1951ALL431, AIR 1951 ALLAHABAD 431

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This appeal is on behalf of a judgment-debtor whose contention was that the application for execution of the decree filed on 23-2-1943, was barred by time. The decree was passed on 20-5-1939, and it was admitted that the judgment-debtor was an agriculturist who was entitled to get the benefit of the Temporary Postponement of Execution of Decrees Act (Act X [10] of 1937). It was, however, urged that Mewa Ram, appellant, having purchased the property in execution of a simple money decree subject to the mortgage on the basis of which the decree in execution was obtained, he came under the exception in Section 6, Clause (c), Temporary Postponement of Execution of Decrees Act (Act X [10] 1937) and the decree being therefore executable against Mewa Ram, the period during which the Temporary Postponement of Execution of Decrees Act remained in force could not be excluded in computing the period of limitation for an application for execution of the decree.

2. The relevant portion of Section 6 of the Act runs as follows:

"6. Nothing herein contained shall apply to a mortgage decree sought to be executed by sale of the mortgaged property in the hands of a subsequent transferee who has taken the transfer subject to the mortgage on the basis of which such decree has been obtained."

3. The question of law which, therefore, arises for decision is whether Mewa Ram is a "transferee who has taken the transfer subject to the mortgage." In the sense that the mortgage was notified at the auction sale, he could be said to have taken the property subject to the mortgage but an auction-purchaser at a court sale does not undertake the liability to pay off the mortgage; the law is well settled that he can even dispute the validity of the mortgage or its existence though the mortgage might have been notified at the sale. Section 6 of the Act provides for a case where a subsequent transferee has taken the transfer subject to mortgage. Though the point did not directly arise, in a Full Bench decision of this Court, in Radha Kishan v. Umrai Singh, 1943 A. L. J. 333 : (A. I. R. (30) 1943 ALL. 316 F. B.) the Court, held that Clause (c) of Section 6, Temporary Postponement of Execution of Decrees Act refers to a case where the property has been purchased subject to an

encumbrance with a stipulation that the transferee will be liable to discharge the encumbrance. The point directly arose in a Division Bench ruling of this Court in *Ashfaul Nabi Khan v. Raza Husain*, 1947 A. L. J. 564: (A. I. R. (35) 1948 ALL. 62) The Division Bench held that "the words, 'who has taken the transfer subject to the mortgage' used in Section 6 (c), Temporary Postponement of Execution of Decrees Act do not refer to the legal liability of a subsequent transferee for payment of his proportionate share of the liability having the right to claim contribution from the other debtors, but they refer to a case where the transferee has undertaken to pay the entire amount of the previous mortgage debt,"

4. We agree with this decision which fully answers the question raised in this present appeal.

5. As a result, we dismiss this appeal with costs.