

Ambika Upadhaya vs Nakched Upadhaya on 16 September, 1954

Equivalent citations: AIR1955ALL112, AIR 1955 ALLAHABAD 112

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a civil revision under Section 115 of the Code. The defendant appellant was a mortgagee, and five mortgage deeds were executed in his favour, four of which were for a sum of Rs. 25/- each, while the fifth was for a sum of Rs. 1700/-. The mortgagor filed an application under Section 12, U. P. Agriculturists Relief Act (17 of 1934) for redemption of the five mortgages. The application was granted, and an appeal against the order was dismissed on 19-9-1949. This civil revision was filed against that order on the ground that the civil Court had no jurisdiction with respect to four of the mortgage deeds.

2. Section 10, U. P. Agriculturists Relief Act, provides that--

"Applications under this Chapter shall, if the principal money secured does not exceed Rs. 500/- be brought before the Collector, and the word "court" in this Chapter shall in such cases include the "Collector"."

At the time of the admission of the appeal learned counsel referred to a Division Bench ruling of this Court in -- 'Sukhdeo Ahir v. Baldeo Ahir', AIR 1949 All 536 (A) and urged that each mortgage deed must be taken separately to determine the jurisdiction of the Court. Learned counsel has urged that with respect to four of the mortgage deeds the civil Court had no jurisdiction and only with reference to the fifth mortgage deed for Rs. 1700/- the suit could be filed in the civil Court. The facts, however, of -- 'Sukhdeo Ahir's case (A)' in which the opposite party was not represented, were entirely different. In that case each of the five mortgage-deeds was of less than Rs. 500/- and it was only the aggregate amount that was in excess. In the [case before us it has been admitted that with reference to the fifth mortgage deed the application for redemption under Section 12 had to be filed in the civil Court. The creditor and the debtor being common, there was no bar to the creditor combining the claim for money due under the other four mortgages with the claim under the fifth mortgage. Order 2, Rule 3, Civil P. C., provides that--

"A plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendant jointly."

The suit was, therefore, clearly cognizable by the civil Court.

3. Learned counsel for the opposite party has drawn our attention to a Full Bench decision of the Oudh Chief Court in -- 'Ram Lakhan v. Bisheshar Misir', AIR 1948 Oudh 214 (B). It is not necessary for us to consider that decision as in any view of the matter, the suit was riled in the right Court.

4. There is no force in this civil revision which is dismissed with costs.