

Ram Bharosey vs Mahadeo Singh And Ors. on 6 August, 1952

Equivalent citations: AIR1953ALL64, AIR 1953 ALLAHABAD 64

JUDGMENT

Misra, J.

1. This is a mortgagee's second appeal against the appellate order of the learned District Judge of Bara Banki upholding the order for amendment of a final mortgage decree which was passed by the learned Munsiff, Ramsanchi-ghat under Section 8, U. P. Debt Redemption Act. A preliminary decree for sale was made on 8-12-1938, that is to say before the U. P. Debt Redemption Act came into force in 1941. The decree was against the three sons of the original mortgagor, Lachhman Singh and two transferees, Sanoman Singh and Mata Prasad Singh. Proceedings for making the decree absolute took place after the commencement of the Act, but the mortgagors did not claim the benefits of the U. P. Debt Redemption Act at that time with the result that the final decree was passed on 26-8-1944, for RS. 1102-15-7. An application for amendment under Section 8 which gives rise to this appeal was filed subsequently on 9-9-1947, and it was opposed, amongst others, on the ground that the amendment was not warranted by the provisions of the Act. The two Courts below repelled the objection and reduced the decretal sum from Rs. 1102-15-7 to Rs. 575. The decree-holder has come up by way of second appeal. In view of the recent Full Bench decision in Ram Kishore v. Shayaur Sunder Lal, A. I. R. 1951 ALL. 155 (F.B.), it cannot now be disputed that where a preliminary decree in a mortgage suit passed before the commencement of the U. P. Debt Redemption Act is superseded by a final decree for sale, the judgment-debtor cannot get the benefit of either Section 8 or Section 9. The preliminary decree cannot be amended because after the passing of the final decree, it is no longer an active or enforceable order having already served its purpose and exhausted itself. The liabilities of the parties are thereafter regulated only by the decree absolute. The final decree is incapable of amendment because it is passed after the Act come into force. It was further held by the Full Bench that the judgment-debtor cannot get the benefit of Section 9 (1) since the application for amendment was not made during the pendency of the suit. In this view, the decision of the Courts below amending the decree is obviously wrong and without jurisdiction.

2. The respondents concede that on merits they have no case left but they raise a preliminary objection to the hearing of the appeal on the ground that the entire appeal has abated by reason of its abatement against Sanoman Singh, one of the transferees of a portion of the hypothecated property. It is urged that by reason of the abatement against Sanoman Singh, his liability has now been finally determined and it cannot be disturbed for if the appeal succeeds it will bring into existence a conflicting decree, an eventuality which must be avoided. I regret I am unable to accept the argument. There are three answers for it and each of them in my opinion is sufficient for overruling the contention. They are: (1) The mere fact that the success of the appeal might bring into effect two conflicting decrees is by itself hardly a reason for ordering the abatement of the appeal. As

held in Lachmi Narain v. Musaddi Lal, A. I. R. 1942 oudh 155:

"The law Courts as far as possible will avoid inconsistency but it is their business to do justice between parties, and if by a pedantic adherence to consistency injustice will be done, they will prefer justice to consistency and therefore inconsistency is not an absolute test."

2. The interest of Sanoman Singh in the mortgage deed and therefore in the decree is separate and refusal to amend the decree so far as the other respondents are concerned will not necessarily affect the rights of Sanoman Singh adversely, and (3) That the amendment was made at the instance of a Mahadeo Singh alone. The other debtors were not shown to be entitled to the benefits of the Debt Redemption Act and were not made parties to the proceedings under Section 8. The amendment of the decree, therefore, must be deemed to be for his benefit alone. Sanoman Singh and the other judgment-debtors were brought on the scene only when Ram Bharosey went up in appeal but that fact does not make them either interested in the result of the appeal or necessary parties thereto. The preliminary objection has no force and it must be rejected.

3. I allow the appeal, set aside the decision of the Courts below and reject the application for amendment under Section 8, U. P. Debt Redemption Act. The appellant will be entitled to his costs here and heretofore.