

Jamuna Prasad vs Harihar Baksh Singh on 11 November, 1953

Equivalent citations: AIR1954ALL360, AIR 1954 ALLAHABAD 360

ORDER

Kidwai, J.

1. This is an application in revision against the order of the District Judge of Bara Banki dismissing an appeal in respect of an application under Section 12 of the U. P. Agriculturists' Relief Act.

2. It appears that there existed four mortgages, the earliest being of the 4th May, 1833 and the latest being of the 4th of July, 1840. No period of redemption was specified in the deeds. An application was filed in 1947 for redemption under Section 12 of the Agriculturists' Relief Act. The trial Court held that the application was barred in view of Article 148 read with Section 28 of the Limitation Act. The lower appellate Court upheld this finding. The applicant has come up in revision. His learned Counsel has relied upon a Bench decision of the erstwhile Allahabad High Court reported in -- 'Ram Prasad v. Bishambhar Singh', AIR 1946 All 400 (A). That case related to proceedings in respect of which the U. P. Debt Redemption Act applied. By virtue of the definition of loan contained in that Act it would apply also to proceedings under Section 12 of the Agriculturists' Relief Act. But the question is whether Section 12 of the Agriculturists' Relief Act justifies an application such as the present one.

3. In that section it is laid down that the application must be made "before a suit for redemption is barred." Even according to the Bench decision upon which reliance is placed a suit for redemption is a different thing to a suit for recovery of possession. According to that decision Section 60 of the Transfer of Property Act provides for a suit for redemption and Section 62 for a suit for recovery of possession. Section 12 of the Agriculturists' Relief Act does not empower any person to apply for recovery of possession in the manner laid down in that section but only applies to a person entitled to institute a suit for redemption and it specifically provides that such an application can only be made before the suit for redemption is barred by time. In the present case, even if the decision to which reference has been made is held to have been correctly decided, the suit for redemption had become barred at the time when the application under Section 12 of the Agriculturists' Relief Act was made. The application can, therefore, not be made under that section. If the applicant has any other remedy for the recovery of possession, it is open to him to take it. There can, therefore, be no doubt that the decision of the Court below under Section 12 of the Agriculturists' Relief Act is correct. This application fails and is dismissed with costs.