

(1949) 11 AHC CK 0015

Allahabad High Court (Lucknow Bench)

Case No: Miscellaneous Appeal No. 84 of 1945

Raja Bajrang Bahadur Singh

APPELLANT

Vs

The Rameshwar Baksh Singh and
Others

RESPONDENT

Date of Decision: Nov. 15, 1949

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 10
- Limitation Act, 1963 - Section 22
- Uttar Pradesh Land Revenue Act, 1901 - Section 185

Hon'ble Judges: Kaul, J; Chandiramani, J

Bench: Division Bench

Advocate: S.C. Das and J.S. Trivedi, for the Appellant; B.K. Dhaon, for Respondents 1 to 5,
for the Respondent

Final Decision: Dismissed

Judgement

Kaul and Chandiramani, JJ.

This miscellaneous appeal arises on the following facts:

In the year 1916 Raja Ram, Ganga Prasad and Manohar Lal created a mortgage in favour of Thakur Rameshwar Bakhsh Singh and three others. The deed was put in suit and a preliminary decree for sale was and passed against Raja Ram alone. The other mortgagors, who were impleaded as Defendants, were not held bound by the mortgage. In July 1936 the present Appellant Raja Bajrang Bahadur Singh purchased the mortgaged property in execution of a decree obtained for under-proprietary rent. On the 13th February, 1939, an application for preparation of a final decree on the basis of the preliminary decree, refer red to above was made against Raja Ram. The preliminary decree was amended under the Agriculturists' Relief Act on the 23rd May, 1939, and the proceedings were consigned to records as a result of the amendment. The present Application for preparation of a final decree was again

made on the 29th May, 1949, against Raja Ram. On the 14th May, 1942, an application, was made by the decree-holders that Raja Bajrang Bahadur Singh, who had purchased, the property in execution of a decree at a court auction, be made a party to the proceedings. An ex parte order allowing the application was passed the same day. On the 18th July 1942, Raja Bajrang Bahadur Singh filed objections against his name being added in the array of parties. The objections were dismissed: hence the present appeal.

2. A preliminary objection was taken to the hearing of this appeal. It was contended that the order passed was not appealable. We are satisfied, that there is no substance in this objection. This was an order passed on an application made under Order 22, Rule 10 Code of CPC which lays down that in cases of an assignment, creation or devolution of any interest other than those mentioned in Rules 1 to 9 of Order 22, Code of civil Procedure, "during the pendency of suit, the suit may, by leave of the Court, be continued, by or against the person to or upon whom such interest has come or devolved" In this case the interests of the judgment debtor had come to Raja Bajrang Bahadur Singh as a result of his purchase of the property mortgaged at the court auction in execution of a decree for Under-proprietary rent. The court allowed the decree holders to continue the Suit against him. The order is therefore clearly covered by the provisions of Rule 10 of Order 22. Order 43, Rule 1 (L), Code of CPC allows an appeal where the leave to continue the suit against the person to whom the interest has come, or upon whom it has devolved, is granted or refused. We accordingly over rule the preliminary objection.

3. Coming to the merits, we fear that there is not much to be said for the Appellant. It was argued by Mr. Trivedi that the application which had been made several years after Raja Bajrang Bahadur Singh purchased the property should not be entertained. It was held by a Bench of the late Oudh Chief Court in AIR 1927 156 (Oudh) that:

The right to apply Under Rule 10 of Order 22, Code of CPC for substitution of the representatives of a deceased party on the record of a case accrues from day to day and is consequently not barred by any prescribed period of limitation.

4. The facts of that case are materially different from the facts of the present case, but the principle underlying the decision that the right to apply Under Rule, 10 of Order 22, Code of CPC accrues from day to day is applicable. Moreover, it may be pointed out that the bar contemplated by Section 3 of the Limitation Act is against institution of the suit and not against the continuation of a suit against the party concerned. The matter is, however, made clear by the provisions of Section 22 of Limitation Act which reads as follows:

(1) Where, after the institution of a suit, a new Plaintiff or Defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in Sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a Plaintiff is made a Defendant or a Defendant is made a Plaintiff.

5. We are therefore satisfied that the order passed by the lower court cannot be challenged on this ground.

6. It was next argued that the discretion exercised by the lower was not rightly exercised in the circumstances of the present case. The main ground in support of this contention was the laches of the decree-holders in making an application for adding the name of Raja Bajrang Bahadur Singh in the array of the party. Looking at the broad features of the case it is noteworthy that the Appellant purchased a property which was subject to encumbrance at a court auction in execution of a decree, passed in a suit brought to enforce the encumbrance. There is hardly any equity in his favour and there are no good grounds to hold that merely because the decree-holders applied after lapse of some years from the purchase of the mortgaged property by Raja Bajrang Bahadur Singh, they should be adjudged disentitled to continue the suit against such a purchaser.

7. Another argument sought to be advanced by Mr. Trivedi was that the property, having been purchased by Raja Bajrang Bahadur Singh in enforcement of a decree for under proprietary rent, was purchase by him free from all encumbrances. Reference was in this connection made to the provisions of Sections 161 and 185 of the U.P. Land Revenue Act. Even a cursory examination of the language of Section 185 makes it clear that that section has no application where a decree for under-proprietary rent has been obtained.

8. We are satisfied that this appeal is without substance. It is dismissed with costs.