(1919) 07 AHC CK 0016

Allahabad High Court

Case No: None

Raja Rattan Sen Singh		APPELLANT
	Vs	
Tripathi Ugarnath and Others		RESPONDENT

Date of Decision: July 17, 1919

Citation: 52 Ind. Cas. 690

Hon'ble Judges: Stuart, J; Ryves, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Tripathi Ugarnath, who is the head of a family of Tewari Brahmins in the Bansi Sub-Division of the Basti District, executed three deeds of conditional sale on the 8th June 1883, the 8th September 1884 and the 19th Jane 1885 in favour of Raja Ram Singh, who was then Raja of Bansi. By these deeds he mortgaged various properties. On the 17th March 1887 Tripathi Ugarnath executed a deed of simple mortgage in favour of Raja Ram Singh. The Raja instituted a suit on the basis of the deed of the 17th March 1887. In the course of the proceedings he withdrew all claim for relief other than a simple money decree. He obtained a simple money decree on the 28th April 1894, and in execution of that simple money decree he brought to sale (in some instances) the whole of the equity of redemption in certain property mortgaged under the first three deeds, and (in other instances) a portion of the equity of redemption in certain other property mortgaged under the first three deeds, and purchased these interests himself. The sale took place on the 20th May 1901, and was confirmed on the 16th July 1901. The Raja, being in possession of the property mortgaged under the first three deeds, continued in possession but made no attempt whatever to have an entry made in the revenue papers to show of what portion of the property he was mortgagee and of what portion he was owner. The Raja died. He was succeeded by Raja Rattan Sen Singh, who died during the course of these proceedings. Raja Rattan Sen Singh instituted suits for foreclosure on the first three deeds. In those suits he demanded that the mortgagors should pay the

full amount due on these deeds but did not state anywhere that he had purchased any portion of the right of equity of redemption himself, and he allowed for no reduction of the amount to be paid for redemption in view of the fact that be had acquired a portion of the equity of redemption himself, and when the other side suggested (in one suit at any rate) that he had purchased a portion of the equity of redemption himself, he appears to have denied the allegation. He obtained decrees in the following form:

That the full amount due under the deeds should be paid to him by certain date and if those amounts are not paid to him, the property should be held foreclosed to him but that if the amounts were paid, it should be incumbent on him to return the property to the defendants clear of all mortgages and charges which the plaintiff or anybody through him might have created on it as also to give possession over the property to the defendants." The mortgagors paid up the amounts due under the decrees in 1911 and 1912. The Raja then instituted a suit for a declaration that he was full owner of portions of the property to the extent to which he had purchased the portions of the rights of the equity of redemption. The learned Subordinate Judge dismissed his suit on the ground that it was barred both by res judicata and by the principle of estoppel. The present first appeal is preferred. We consider that the learned Subordinate Judge rightly dismissed the suit. He states in his judgment:

Leaving aside the many arguments which the learned lawyers addressed to me on behalf of the plaintiff and the learned expositions of the law of res judicata which they made, what I want to ask is how can the plaintiff back out of the express order in the decree whether rightly or wrongly made. I do not think he can so long as decrees are decrees." There is much sound sense in this reasoning. Further it is to be noted that by carefully sup-pressing his present pleas the plaintiff-appellant obtained something like double the amount of the money to which he would have been entitled had he advanced them. We consider this a clear case of res judicata, and the plea of equitable estoppel appears also to have been made out in spite of the fact that it mast be presumed that the defendants-respondents were aware of the purchase of the rights of equity of redemption. But it is to be noted that when they themselves put the point forward apparently in order to reduce the amounts that they had to pay, the plaintiff-appellant apparently denied that he had made any purchase, and the Court held against the defendants respondents because they ware unable to prove the allegation. When the plaintiff-appellant deliberately agreed to return the property to the defendants clear of all mortgages and charges provided they paid a amount and they did pay that amount, it appears to us that this suit would be barred by equitable estoppel, even if the defendants-respondents were in a position to know that the plaintiff-appellant had a little under which he could have retained full proprietary rights over a portion of the properly concerned.
2. We, therefore, dismiss this appeal with costs, including fees on the higher scale.