

Thakur Prasad Vs Gaya Sahu and Others

Court: Allahabad High Court

Date of Decision: March 23, 1898

Citation: (1898) ILR (All) 349

Hon'ble Judges: Burkitt, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Burkitt, J.

From a perusal of the order of the Subordinate Judge it would appear either that the learned Subordinate Judge did not comprehend all the bearings of the case then in appeal before him, or that the appeal was-not properly argued before him. I note, however, that

the memorandum of appeal which was before the learned Subordinate Judge contained and set forth all the pleas which have now been raised

before me to-day. The admitted facts are that in April 1885, one Chandi Prasad mortgaged a four pie share in a certain village to the plaintiff; that

on the 19th of January 1892, the plaintiff got a decree for sale of the mortgaged property in a suit on that mortgagee; and that on the 20th

September 1893, the plaintiff mortgagee purchased the same property and was put in possession by the Court. He was, however, unable to obtain

possession of the whole. It appears that on the 9th March 1893, that is to say, more than a year after the plaintiff had obtained a decree for sale of

the mortgaged property, Chandi Prasad leased a certain portion of that property to the defendant-respondent. By the present suit the plaintiff

appellant seeks to have that lease set aside and to obtain possession of the property the subject of the lease. He also asks for mesne profits. These

were the reliefs asked for at the hearing of this appeal. As to the lease, it is contended that it is bad with reference to the provisions of Section 52

of the Transfer of Property Act. In my opinion that contention is sound. The lease was executed undoubtedly during the active prosecution of a

contentious suit, a suit which had been commenced by the plaintiff in September 1891, and in which the plaintiff in January 1892 had obtained a

decree for sale of the mortgaged property, which included the land leased to the respondents. The transfer under this lease which is for a period of

no less than eleven years undoubtedly must affect the rights of the auction purchaser. The auction purchaser certainly in my opinion comes within

the wording of Section 52 of the Transfer of Property Act as being a party to an order which might be made in the suit. In a somewhat similar

case, though no doubt, in a case arising under the CPC and not under Act IV of 1882, *Debi Prasad v. Baldeo* ILR All. 123, it was held that even

an ordinary agricultural lease made during the pendency of an attachment came within the mischief aimed at by Section 276 of the Code of Civil

Procedure. A fortiori it appears to me that a lease of property made by a judgment-debtor against whom a decree had been made u/s 88 of the

Transfer of Property Act for sale of that property comes within the provisions of Section 52 of the latter Act. The lease executed by the judgment-

debtor, Chandi Prasad, whatever be its object, cannot but have the effect of, to some extent, defeating the auction purchaser of that property. I am

therefore of opinion that the appellant here is entitled to my judgment. I set aside with all costs in those Courts the decrees of both the lower

Courts, and, allowing this appeal, I give a decree in the plaintiff's favour for possession of the sir lands mentioned in the schedule of his plaint, with

the exception of Nos. 716 and 718, of which he is in possession. I further give to the plaintiff a decree for mesne profits to be ascertained in

execution up to the date the plaintiff is put in possession under this decree. The plaintiff appellant will recover the costs of this appeal.