

(1877) 04 AHC CK 0002

Allahabad High Court

Case No: None

Sarfraz Ali and Others

APPELLANT

Vs

Daia Chand and
Others

RESPONDENT

Date of Decision: April 19, 1877

Citation: (1875) ILR (All) 425

Hon'ble Judges: Spankie, J; Pearson, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Pearson, J.

The provisions of Clause 15, Section 1, Act XIV of 1859, relating to suits against a mortgagee for the recovery of Immovable property mortgaged, were modified by Article 148, Schedule ii, Act IX of 1871, principally in this respect, that the acknowledgment in writing in the mortgagor's title or right of redemption, from the date of which a new period of limitation is allowed to commence, is required to be made within the period of limitation originally prescribed and reckoned from the date of the mortgage; the reason of the modification is, I conceive, discoverable by reference to Section 29 of the last-mentioned Act, which declares that at the determination of the period limited to any person for instituting a suit for possession of any land, his title to such land shall be extinguished. The intention of the Legislature was to allow a further period of limitation to run from the date of an acknowledgment, not of rights already extinct, but only of rights still subsisting.

2. Before the enactment of Clause 15, Section 1, Act XIV of 1859, there was no limitation to suits for the redemption of mortgage of landed property. In 1841, therefore, when the acknowledgment, found in the settlement record of that year, was made by the defendants in this suit, or their forefathers, that they held the property in suit as mortgagees, there was nothing in the law to preclude the mortgagors from suing for the redemption of the mortgage. In other words, the

right acknowledged was a right not extinguished by lapse of time, but still subsisting; the acknowledgment fulfils the intention and satisfies the requisition of the clause in Article 148, Schedule ii, Act IX of 1871, modifying the provisions of Clause 15, Section 1, Act XIV of 1859, and renders it unnecessary to enquire and ascertain when the mortgage, acknowledged in 1841, was actually made.

3. From this point of view it is immaterial whether the first two pleas in the appeal now before us are good. The plea of *res judicata* set forth in the last ground of the appeal is certainly not established.

4. The only question remaining for trial was whether the property in suit was mortgaged to the defendants' ancestors by the ancestors of the plaintiff's. That question has been determined in the affirmative by the Lower Appellate Court, whose finding on the point is not impugned by the special appellants.

5. I would affirm the Lower Appellate Court's decree, and dismiss the appeal with costs.

Spankie, J.

6. I am of the same opinion.