
(1877) 05 AHC CK 0005

Allahabad High Court

Case No: None

Girdhari and Others

APPELLANT

Vs

Sheoraj and Others

RESPONDENT

Date of Decision: May 28, 1877

Citation: (1875) ILR (All) 431

Hon'ble Judges: Robert Stuart, C.J; Oldfield, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. The subject of the mortgage to which this suit refers is land situated in the district of Mirzapur, and land in pargana Bhadohi, in the family domains of the Maharaja of Benares, and Regulation VII of 1825 has provided a special jurisdiction for the trial of suits for land in these domains.

2. This suit was brought in the Court of the Subordinate Judge of Mirzapur by all the mortgagors, or rather the parties who now represent the original mortgagors, for redemption of the entire property mortgaged, and authority was asked, u/s 13⁺ of Act VIII of 1859, to try the suit in the Civil Court of Mirzapur in respect of the property situated in the family domains, but this was refused, as the High Court found that such authority could not be given in the existing state of the law.

2. Two of the plaintiffs who were only interested in the mortgage to the extent of the property in the family domains then withdrew from the suit, and the others proceeded with their claim to redeem the portion of the mortgaged property situated in Mirzapur, and they have obtained a decree from the Subordinate Judge for possession of the mortgaged property in Mirzapur on the basis of the satisfaction of the entire debt charged on the two properties.

3. The Judge, in appeal, has reversed the decree and dismissed the suit, holding that the trial will raise questions affecting property in the family domains in respect of which he has no jurisdiction, instancing in this view, and in the way of objections,

the question whether the mortgagees were in possession of certain lands in Katehri (in the domains), and without which the accounts cannot be made up.

4. We do not consider that this objection to the trial of the suit is valid.

5. The plaintiff's were at liberty to forego, as they have done, suing for possession of the property situated in the family domains, and the suit as now brought is only for Immovable property in the district of Mirzapur: the suit does not seek to recover and in the domains, nor is there any claim raised in this suit of a nature exclusively cognizable by Courts established under Regulation VII of 1825. Section 5 of Act VIII of 1859 gives the Mirzapur Court jurisdiction to entertain the suit in respect of the Immovable property in Mirzapur, and that jurisdiction could not be ousted because, in the course of the trial of the suit, it may be necessary incidentally to decide, for the purposes of the suit, questions relating to mortgaged property held by the defendants in the family domains, the extent of it in their possession, and its profits, in order to make up the accounts of the entire mortgage so as to ascertain if the entire mortgage-debt has been satisfied, and if, therefore, the plaintiff has a right to recover the mortgaged property situated in Mirzapur.

5. We reverse the decree of the Lower Appellate Court and remand the case, u/s 351, Act VIII of 1859, for trial on the merits.

-----Foot Note-----

+ [Suits for Immovable property situate in Districts subject to different Sudder Courts.

Section 13: If the Districts within the limits of which the property is situate, are subject to different Sudder Courts, the application shall be submitted to the Sudder Court to which the District in which the suit brought is subject; and the Sudder Court to which such application is made, may, with the concurrence of the Sudder Court to which the other District is subject, give authority to proceed with the same.]