

(1880) 04 AHC CK 0017

Allahabad High Court

Case No: None

Ram Lal

APPELLANT

Vs

Harrison

RESPONDENT

Date of Decision: April 6, 1880

Citation: (1880) ILR (All) 832

Hon'ble Judges: Straight, J; Oldfield, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Oldfield, J.

The plaintiffs sue to recover money due on a bond by sale of a one-biswa five-biswansi share in mauza Sakhauli hypothecated in the bond. They made the obligors and T.B. Harrison defendants, the latter being the representative of a subsequent mortgagee, and who has objected to the sale of the mortgaged property. The first Court decreed the claim. The lower Appellate Court has dismissed that part which seeks to make the property liable. The Judge holds that the period of limitation will run in this suit from the date of the bond, 23rd November 1866, and though the suit was instituted on the 21st November 1878, yet since the property mortgaged was not indicated by name in the original plaint, and not until 8th January 1879, when an amended plaint was filed to the effect that the property hypothecated and claimed is in mauza Sakhauli, therefore the suit, so far as it affects the property, must be held to have been instituted on the 8th January or after the expiry of the term of limitation; and the Court further holds that the deed does not distinctly show that the share of one-biswa five-biswansis hypothecated in the deed is a share to that amount in mauza Sakhauli; and on the above grounds the Judge dismissed the suit.

2. We are of opinion that the decision cannot be maintained. The date of amendment of a plaint will not affect the question of limitation for the institution of a suit; the limitation is determined with reference to the date of institution of a suit,

and by Section 4 of the Limitation Act a suit is instituted in ordinary cases when the plaint is presented to the proper officer, and its return for amendment and subsequent presentation and acceptance by the Court will not constitute a fresh institution of the suit.--(see cases referred to in note to Section 53, Broughton's Civil Procedure Code, Act X of 1877). It is true that when after the institution of the 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, but this rule is inapplicable to the case before us where the defendant Harrison had been made a party at the first institution of the suit. The principal ground, therefore, on which the Judge has dismissed the claim to bring the property to sale is invalid, and his remarks on the indistinctness of the deed as indicating that the share in mauza Sakhauli was mortgaged do not adequately dispose of the claim. It is for the Judge to determine whether as a matter of fact the parties to the deed did mortgage the share in Sakhauli by the bond, and evidence on the point may be adduced. --See Proviso 6, Section 92, and Illustration to Section 95, Evidence Act. The Judge must also decide the question (raised by one of the pleas taken by the respondent), whether, looking to the conduct of the plaintiffs at the time the second mortgage was made, they are debarred now from enforcing their prior lien.

3. We remand the case for trial of the issues indicated: on submission of the finding ten days will be allowed for filing objections.