

(1922) 01 PAT CK 0010

Patna High Court

Case No: None

Mathura Prasad Sahu

APPELLANT

Vs

Dasai Sahu and Another

RESPONDENT

Date of Decision: Jan. 12, 1922

Acts Referred:

- Transfer of Property Act, 1882 - Section 52

Citation: AIR 1922 Patna 542 : 65 Ind. Cas. 325

Hon'ble Judges: Das, J; Adami, J

Bench: Division Bench

Judgement

Das, J.

In my opinion the decision of the learned Subordinate Judge is right and ought to be affirmed. The facts, shortly, are as follows:

2. In 1913 the present plaintiff instituted a suit, being Suit No. 144 of 1913, against one Budri Narain on the foot of three mortgages executed by Badri Narain in favour of the plaintiff. These three mortgages were executed on the 24th February 1905, 4th August 1906, and 21st August 1906, respectively. By the first bond a 13-annas share in Manopur Gambhir was mortgaged; by the second bond 9-annas 4 pies share in Manopur Gram was mortgaged, and by the third bond both the properties were mortgaged. On the 26th March 1914 the plaintiffs obtained a preliminary decree, and on the 27th February 1915 they obtained the final decree.

3. It appears that on the 4th June 1915 the residuary share in Manopur Gambhir was sold for arrears of Government revenue and was purchased by the defendant, It is conceded that by such purchase the defendant acquired the right, title and interest of the judgment-debtor, that is to say, Budri Narain, On the 10th February 1916 Manopur Gambhir was sold in execution of the mortgage decree and was purchased by the decree holder. The plaintiff obtained delivery of possession on the 28th May 1917 through Court but failed to obtain actual possession from the

defendant who claimed title to Manopur Gambhir by virtue of his purchase at the sale for arrears of Government revenue.

4. We are in this appeal concerned with the question whether the plaintiff as the auction-purchaser is entitled to recover possession of the property from the defendant who purchased the property at the sale for non-payment of Government revenue.

5. The first point that has been urged on behalf of the appellants is this. That the doctrine of *lis pendens* does not apply, and accordingly there is still a right of redemption in the defendant. The learned Vakil for his argument relies on the express language of Section 52 of the Transfer of Property Act, That section runs as follows:

During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a contentious suit or proceeding in which any right to Immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

6. The argument of the learned Vakil is this. That Section 52, by the express language which has been adopted by the Legislature, only applies to a voluntary transfer and not to an involuntary transfer such as that which has taken place in this case and by which the defendant has acquired title to the property. It may be conceded that, so far as the language of Section 52 is concerned, it to some extent supports the contention of the learned Vakil; but, having regard to the numerous cases which have been decided on the point, it is plainly impossible for us to encourage this argument at the present day. The authorities are all collected in Dr. Ghose's Book on the Transfer of Property Act u/s 52, and there is a case to which the learned Subordinate Judge refers, the case of *Har Shankar Prasad Singh v. Shew Gobind Shaw* 26 C. 966 : 10 W.N. 317 : 13 Ind. Dec. (N.S.) 1218 which is an express decision against the contention of Sorishi Babu. That case was argued on one side by Dr. Rash Behary Ghose and on the other side by Mr. Saroda Ch. Mitter. It may be assumed that whatever could be said was said and Mr. Justice Ghose, who delivered judgment in the case, assumed that the doctrine would apply to an involuntary sale. But the learned Vakil says that there is a distinction between an execution sale and a sale for non-payment of Government revenue. I am unable to appreciate the distinction. In my opinion, the view of the learned Subordinate Judge on this point is right and must be affirmed. The next argument is, that the decree which was obtained by the plaintiff in the suit to which I have already referred was not a mortgage decree and that there was a right of redemption in Budri Narain and there is still a right of redemption in the defendant. The decree, however, is passed as a mortgage decree and it is impossible to hold now that the decree which was

passed as a mortgage decree was in fact not a mortgage-decree: but the contention of the learned Vakil is this. That the plaintiff brought one suit in respect of three mortgagee and that it was incompetent to the learned Subordinate Judge to direct all the properties to be sold in default of payment by Budri Narain of the aggregate sum of money that was due to the plaintiff on all the mortgages. Now, if that was so, I think that the only remedy which was available to Budri Narain at that stage was to appeal from that decree to the High Court, but that course was not adopted by Budri Narain. The Court was the only Court that could deal with the matter; it did deal with the matter and in my opinion, it cannot be suggested that the Court had no jurisdiction to pass the decree which in fact it did.

7. But the facts are not what they are stated to be by Sorishi Babu. We have looked into the decree which was passed by the learned Subordinate Judge and it seems to me that what the learned Subordinate Judge did in fact was, to give the plaintiff three decrees on the foot of three mortgage-bonds. The accounts were all directed to be taken separately; the mortgaged properties under each bond were specifically mentioned in the decree, and the learned Sub-ordinate Judge directed that on default of payment by the mortgagor of the money due to the mortgagee on the taking of accounts, the mortgaged properties or a sufficient portion thereof should be sold. I take the decree to mean that, upon default on the part of the mortgagor to pay the money due in respect of each bond, the properties covered by that bond would be sold. That seems to me to be the plain meaning of the decree that was passed by the learned Subordinate Judge. If that be so, then the question is at an end and the decision of the learned Subordinate Judge must be correct.

8. The only other point is, that the property did not belong to Badri Narain. According to the attention of the defendant, Badri Narain was one of three brothers, the other brothers being Thakur Prasad and Ram Nath and that the property was in fact purchased by Thakur Prasad. According to Saroshi Babu there was a separation between the three brothers, and Badri Narain had no title to mortgage the properties to the plaintiff. The evidence has been dealt with by the learned Subordinate Judge and though it is quite true that upon the death of Thakur Prasad his widow, Rajo Kuer, was for the time being registered as the owner of the property in question, still we cannot altogether ignore the civil suit which was instituted by Badri Narain and Ram Nath against Rajo Kuer, nor can we ignore the consent decree which was passed by which Rajo Kuar admitted that the three brothers were joint and that the property belonged to the three brothers jointly. But it is urged that there was a subsequent suit by Rajo Kuer's daughter against Ram Nath and Badri Narain to recover possession of the property on the allegation that her father had purchased the property while he was separate from Ram Nath and Banwari Lall. That suit, however, was brought after the decree was in fact obtained by the plaintiffs in this suit against Badri Narain and the decree which was obtained by Rajo Kuer's daughter is dated the 28th June 1916, The learned Subordinate Judge holds, and I think rightly, that that was an entirely collusive suit in order to defeat the title

of the plaintiff.

9. This appeal must be dismissed with costs.

Adami, J.

10. I agree.