
Subalal Singh and Others Vs Rameshwar Singh and Others

None

Court: Patna High Court

Date of Decision: April 4, 1917

Citation: AIR 1917 Patna 674 : 40 Ind. Cas. 525

Hon'ble Judges: Jwala Prasad, J; Chapman, J

Bench: Division Bench

Judgement

Chapman, J.

In this case three junior members of a joint Mitakshara family sought to redeem a mortgage. In the suit which had been

brought upon that mortgage their fathers had been made parties and the litigation had ended in the sale of the mortgaged property.

2. Of the three plaintiffs it has been found that plaintiff No. 3 was not born at the time of the decree and sale, In respect of the plaintiff No. 1 it has

been found that the mortgagee had no notice of his existence. These two cases, therefore, both upon the authorities and upon the law failed and

there can be no doubt whatever that the suit was rightly dismissed.

3. With regard to plaintiff No. 2 the finding is that he was a party in .another mortgage suit which was tried along with the mortgage suit which

ended in this sale and that he actually prosecuted the defence and looked after both cases. No room, therefore, is left for any possible finding that

this plaintiff No. 2 was intentionally omitted from the mortgage suit in order to defeat his right to redeem, and it is only in such cases that any

concession has been made by this Court in favour of a son seeking to redeem his father's mortgage after sale. Four Judges of this Court Ranjit

Prasad Tewari v. Ramjatan Pandey 37 Ind. Cas. 833 : 1 P.L.W. 197 : (1917) Pat. 113 Chamier, C.J. and Sharfuddin, J. and Raghunandan Singh

v. Permeshwar Dayal Singh 39 Ind. Cas. 779 : 1 P.L.W. 636 : 2 P.L.J. 306 : (1917) Pat. 137 : Chapman and Roe, JJ. ½Ed. have concurred in

holding that even if the mortgagee has notice of the existence of a son, the son has no right to redeem merely upon the ground that he was not a

party to the mortgage

The appeal fails and is dismissed with costs.

Jwala Prasad, J.

4. I agree.