

(1920) 05 CAL CK 0045

Calcutta High Court

Case No: None

Dinabandhu Maiti

APPELLANT

Vs

Bishnu Bewa and Others

RESPONDENT

Date of Decision: May 13, 1920

Citation: 60 Ind. Cas. 715

Hon'ble Judges: Panton, J; N.R. Chatterjea, J

Bench: Division Bench

Judgement

1. The question involved in this case is, whether the suit upon the mortgage-bond out; of which this appeal arises, is a suit for enforcement of money charged upon mortgaged property within the meaning of Article 182 of the Limitation Act.

2. The mortgagor took a loan of a certain quantity of paddy and agreed to re pay it together with interest thereon at so many kathas per Kuri per year and fan her agreed that, on default of payment within the time stipulated, the mortgage would be entitled to realise the money-the subject matter of the claim together with costs by gale of the property which was mortgaged to secure the loan, and that if that was insufficient to satisfy the debt, by attachment and sale of other properties of the mortgagor.,

3. The suit was brought more than six years after, and within twelve years of the due date of payment.

4. The Court below, relying on the decision in the case of Rash Bihari Das v. khunj bihiri patra 37 Ind. Cas. 805 : 24 C.L.J. 348 held that the suit was barred by limitation. That case bus been considered and distinguished in several cases: See Sripoti Lal Dutt v. Sarat Chandra mondal 46 Ind. Cas. 78 : 22 C.W.N. 790 Sridhar Chandra Maii v. Ram Gobinda Jana 50 Ind. Cas. 608 : 29 C.L.J. 68 Indra Narain Shao v. Diiabar Samanta 5 Ind. Cas. 849 : 23 C.W.N. 949 : 47 C. 125 and Jogendra Nath Singh v, Mohan Lal Khan, 58 Ind. Cas. 995 : 23 C.W.N. 951

5. We have been pressed to refer the case to the Full Bench; but the terms of the bond in the case of *Rash Bihari Das v. Kunjaoman Patra* 37 Ind. Cas. 805 : 24 C.L.J. 348 do not appear to be the same as those of the bond in the present case. In fact, all the terms of the mortgage-bond, and specially those relating to enforcement in default of payment, do not appear from the report of that case.

6. In the present case, as stated above, it was stipulated in the bond that the money (*Dabir taka mai kharcha*) would be realisable by the sale of the mortgaged property. The case, therefore, is distinguishable from that of *Rash Bihari Das v. Kunjahihari Patra* 37 Ind.Cas. 805 : 24 C.L.J. 348. In the circumstances, we do not think that the case should be referred to the Full Bench and the appeal must be allowed.

7. We accordingly hold that the suit is not, barred by limitation. But as there are several other questions to be tried, the decree of the Courts below must be set aside and the case sent back to the Court of first instance for trial of the other issues.

8. Each party to bear his own costs up to this stage. Future costs to abide the result.