51 Ind. Cas. 849

Calcutta High Court

Case No: None

Indra Narain Shao		APPELLANT
	Vs	
Dijabar Samanta and Ram Chand and Another		RESPONDENT

Date of Decision: April 23, 1919

Citation: 51 Ind. Cas. 849

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

Bench: Division Bench

Judgement

1. This appeal arises out of a suit upon a mortgage-bond. Various defences were raised in the case.

2. The Courts below have found in favour of the plaintiff upon all points, except that the lower Appellate Court has held that the suit is not governed by Article 132 Schedule II of the Limitation Act and that as it was instituted more than 6 years after the due date of payment, it was barred by limitation.

3. The mortgagor borrowed a certain quantity of paddy from the plaintiff and agreed to repay the paddy with interest at a certain rate mentioned in the bond. It is mentioned in the bond that the paddy was sold for Rs. 192. Then the stipulation in the bond is as follows: "If I do not repay the paddy within the period aforesaid, then on the expiry of the aforesaid period you will be entitled to recover the price of paddy with interest thereon at the rate of 1 1/2 pice per rupee per month, together with costs of Court by attachment and sale of the aforesaid lands (together with the crops thereon) which are given in mortgage for the repayment thereof."

4. It appears, therefore, that money (the price of paddy with interest) was charged upon the Immovable property. The learned Subordinate Judge held that Article 132 was not applicable, relying upon a decision of this Court in the case of Bash Bihari Das v. Kunja"

bihari Patra 37 Ind. Cas. 805 ; 24 C.L.J. 348 in which it was held that a suit upon a mortgage-bond to secure the repayment of the loan of certain paddy was not a suit to enforce payment of money charged upon Immovable property. But all the terms of that mortgage-bond do not appear from the report of the case and the judgment seems to have proceeded on the ground that no money was charged upon the property.

5. The question whether money is charged upon Immovable property must depend upon the terms of the bond in each case.

6. In the present case, as already stated, the mortgagee was expressly given the right to recover the price of the paddy with interest thereon at 1 1/2 pice per rupee per month (together with costs of Court), by attachment and sale of lands which were given in mortgage for the repayment thereof. There was, therefore, a clear charge upon the land for the price of the paddy.

7. We may refer to the case of Sripati Lall Dutt v. Sarat Chandra Mondal 46 Ind. Cas. 78 ; 22 C.W.N. 790 where Fletcher and Shamsul Huda, JJ., in a some what similar case, held that the case would come under Article 132 of the Limitation Act. There the plaintiff lent a certain quantity of rice and the bond provided that if default was made in the kists, the mortgagees would be competent to realise the money which would be due at the rate of Rs. 6 per map and that the realization might be made by sale of the mortgaged property mentioned in the schedule to the bond and of all other moveable and Immovable properties belonging to the mortgagors. The learned Judges distinguished the case of Bash Bihari Das v. Kunjabihari Patra 13 C.W.N. CLXXXIV (184).

8. We may also refer to the case of Nilmony Singha v. Haradhan Dass 13 C.W.N. (184) Appeal from Appellate Decree No. 2804 of 1907. In that case the interest was payable in kind (paddy) and the case was held by Mookerjee, J., to be governed by Article 132.

9. In the present case as stated above, the bond expressly provided that the mortgagee would be entitled to realise the price of the paddy together with interest at 1 1/2 pice per rupee per month by sale of the mortgaged property.

10. We are accordingly of opinion that the case is governed by Article 132 of the Limitation Act,

11. The decree of the lower Appellate Court is, therefore, set aside and that of the Court of first instance restored with costs.