(1869) 01 CAL CK 0025

Calcutta High Court

Case No: Regular Appeal No. 132 of 1868

Maharani Braja Sundari Debi		APPELLANT
	Vs	
Rani Lachmi Kunwari and Others		RESPONDENT

Date of Decision: Jan. 5, 1869

Judgement

Norman, J.

The point that we are called upon to decide is, whether the suit which was instituted more than 46 years after the foreclosure, is or is not barred by limitation. The contention of the plaintiff has been that this is a suit against a trustee. Before proceeding to the point which we have to decide in this case, it is well that we should state our view of the evidence which would go to shew that Raja Biswanath Roy was a mere trustee for the idol in respect to this property. No evidence has been given to shew that there ever was any formal dedication of the property to the idol. It is a mere purchase in the name of an idol. From the time of the purchase of the property, Raja Biswanath Roy appears to have dealt with it as his own. In 1802 it was conveyed or mortgaged to one Bhikum Roy, and in 1812 it was mortgaged apparently for the Raja''s purposes. There is no proof that either the first or the second mortgage was executed in any way for the purposes of the worship of the idol, or for the performance of any trust connected with it. For all that appears, the money was raised for the private purposes of the Raja. No evidence has been given to show that the revenue of the property was expended for the purposes of the idol, and the pleader for the appellant, when arguing the case before us, was not prepared to go into evidence upon that point. We do not, therefore, mean to rest our decision of the case on that point. But we may observe that we do not see any reason to doubt the correctness of the decision of the Principal Sudder Ameen that there was no real endowment.

2. The learned Counsel for the appellant referred to Section 2 of Act XIV of 1859, and he contended, citing a case Luteefun v. Bego Jan (5 W.R., 120), that if the defendants, at the time of taking their several interests, were cognizant of the trust affecting the property, or if reasonable inquiry would have made them so, they took the property

subject to the trust (notwithstanding that they paid full value for it) and in all respects stood in the same position as the original trustee; that they are not bona fide purchasers from a trustee within the meaning of Section 5 of Act XIV of 1859, but actual trustees within Section 2. We think, however, that the plaintiff has failed to establish a case on which such an argument can be based. We think we may assume that Raja Janakiram must, or at least may, have known that the property stood in the name of the idol, but it does not follow that he knew, or must be taken to have known, that there was a dedication of the property to the idol. The purchase in the name of the idol may have been a mere fictitious, benami transaction, Raja Biswanath Roy being himself the real purchaser and beneficial owner. Our own impression is that such was really the fact. Raja Janakiram, if treated as having notice of the proper title of the idol, must be taken to have known what was also the fact, viz., that the property had been from the date of the first purchase dealt with by Raja Biswanath Roy as his own, and mortgaged by him on two distinct occasions. We see no reason to suppose that he knew, or had any good reason for believing, that Raja Biswanath Roy was a mere trustee for the idol; and upon the facts which would come to his knowledge, he certainly was not bound to assume that such was the case. He advanced a large sum of money on mortgage, apparently in the full belief that the security was a good one. He, therefore, stands in the position of a bond fide purchaser for valuable consideration, and is within the protection of Section 5 of Act XIV of 1859. Under that section and Clause 12 of Section 1, which must be read in connection with it, the suit should have been brought within 12 years from the date of the purchase. The cause of action so far as it would seek to set aside the mortgage and rights acquired under it, must, u/s 5, be deemed to have arisen from the date of the mortgage in 1816, and so far as it seeks for possession, from the date when possession was obtained by the mortgagee subsequent to the foreclosure in 1820. No reason has been assigned for the delay in bringing the suit. No reason has been assigned why plaintiff''s father, who seems to have attained his majority in 1829, did not bring the suit. The present suit is, therefore, barred by Section 5 of Act XIV of 1859. The result is that the appeal will be dismissed. The respondents will recover their costs in proportion to their respective interests.