(1919) 12 BOM CK 0034

Bombay High Court

Case No: Second Appeal No. 1068 of 1918

Satagauda Appanna Alagaudanavar		APPELLANT
	Vs	
Satappa Daeigauda Genapnavar		RESPONDENT

Date of Decision: Dec. 11, 1919

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 34 Rule 1

Citation: (1920) 22 BOMLR 815 : 57 Ind. Cas. 577

Hon'ble Judges: Norman Macleod, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Norman Macleod, Kt., C.J.
The plaintiff purchased from one Santu Chambhar what he thought was the equity of redemption in a certain property mortgaged by Santu Chambhar to the 1st defendant in 1893. When the suit was launched defendants 2 and 3 were in possession claiming that they had purchased the property from a brother of Santu Chambhar, and that Santu Chambhar had no interest in the property. Therefore they were made parties by the plaintiff, who thought that it was necessary to make them parties under Order XXXIV, Rule 1. The record in the print is somewhat defective as it does not appear what were the issues raised in the trial Court. But I find that the following issues were raised:-

(1) Whether the defendants 2 and 3 are in possession through the 1st defendant; (2) whether the suit could lie in its present form against them in view of the finding on issue 1; and (3) what order should be passed.

2. I do not find any decision of the trial Court on the 1st issue. All that appears is that the 2nd and 3rd defendants were not considered necessary parties to the suit. Therefore the

suit was dismissed as against them. I can only presume that somewhere the Court recorded evidence and decided that defendants 2 and 3 were not in possession through the 1st defendant. I find now that the 1st issue was decided in the negative for want of evidence, and as defendants 2 and 3 claimed independently of the mortgage and against both the mortgagor and the mortgagee they could not be proper parties to this suit which was a redemption suit. This suit was then dismissed as against the 1st defendant also because the plaintiff did not accept the option given to him of prosecuting the suit as against him. That decision was upheld in First appeal. In second appeal the result must be same. Before the passing of the CPC of 1908 it seems to have been doubted whether u/s Transfer of Property Act which enacted that all persons having an interest in the property comprised in a mortgage should be joined was meant to refer to parties who were not interested either in the mortgage security or the right of redemption. This obscurity was set aside by Order XXXIV, Rule 1, of the Civil I Procedure Code of 1908. It is obvious that a suit for redemption is a suit between the mortgagor and the mortgagee, and only those parties can be joined who claim an interest in the mortgage security or in the right to redeem. For if you bring in outsiders who claim a title to the property independently, of the rights of the mortgagor and the mortgagee, you are introducing entirely new matter into the suit, now matter which would be absolutely irrelevant to the issues which would be framed in the mortgage Suit The decree then of the lower appellate Court was perfectly correct and the appeal must be dismissed with costs.