

Kamla Devi and Others

Vs

Pt. Mani Lal Tewari and Others

Civil Appeal No. 803 of 1968

(V.R. Krishna Iyer, A.C. Gupta, Syed M. Fazal Ali JJ)

22.09.1975

JUDGMENT

KRISHNA IYER, J. -

1. This appeal by special leave challenges the order passed in review by the learned single Judge, whereby he reviewed his earlier order passed in revision and held that a personal decree should be passed, overruling the contention regarding limitation.
2. Shri Dikshit, appearing for the appellant, has strenuously pressed three points before us. He has contended that the whole decree was a nullity, because the minor against whom the suit was filed had not been represented properly or in accordance with law. There being no representation of the minor, the decree as against him, was void. Later in the course of the arguments, he brought it to our notice that another suit had been filed raising this ground, and prayed that we should not pronounce on the merits of this contention. We would rather leave it to the court before which any suit may be pending to decide it on its merits. Anyway, that point is not pressed for the present purpose.
3. Shri Dikshit, secondly contended that the right to a personal decree had been specifically abandoned in the plaint by the respondent and that, therefore the order passed in review, granting a personal decree was contrary to the very stand taken by the respondent in his plaint. We find no basis whatever for this submission. On the other hand, counsel for the respondent, Shri Goyal has drawn our attention to the judgment of the original court wherein it is stated :

It is not disputed that the decree out of which these proceedings have arisen had provided that if the sale proceeds of the mortgaged property were insufficient to satisfy the decree, it was open to the decree holder to recover the balance from the person or other properties of the judgment decrees.

Nothing has been brought to our notice to indicate that a right to a personal decree has been given up. All that has been stated in the plaint and holds good even today, is that while executing the personal decree, the plaintiff will be subject to the provisions of Section 4 of the U. P. Debt Redemption Act, 1940. Shri Goyal, appearing for the respondent, even now agrees to this position.

4. The last contention pressed was that the personal decree should not have been granted, because it was barred by limitation. The basis for this contention is that the payment of Rs. 25, which has been acknowledged on the registered mortgage deed, was not itself by a registered endorsement and, therefore, the plaintiff was entitled to a period of three years only, even if Section 19 may give an

extension of limitation. We see no merit in this contention. The function of Section 19 is to provide a later date to count the period of limitation afresh, and that fresh period of limitation will be computed from the time when the acknowledgment is signed. Nothing turns on whether the acknowledgment is itself registered or not. The office of Section 19 being to postpone the date of reckoning limitation and not to create a different substantive period of limitation, the latter depends upon the appropriate article of the Limitation Act which applies to the suit. In this case, the mortgage document was registered and the personal covenant was contained in the registered deed. Therefore, article 116, which gives a period of six years, applies. Thus, the fresh period of limitation will be six years and it has to be counted from the date of acknowledgment, namely, August 31, 1940. In this view, there is no merit in the plea of limitation either. This is obviously a case where the revisional court had missed a fact apparent upon the record and, therefore, thought it fit, in the exercise of its discretion to review its judgment. Justice has thereby been furthered rather than frustrated. We are not here concerned with an endorsement on the deed as constituting a cause of action.

5. We dismiss the appeal but, in the special circumstances, the parties will bear their own costs.

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