

LAHORE HIGH COURT

Ralla Ram

Vs

Bhana Mal

(Bhide, J.)

05.07.1932

JUDGMENT

Bhide, J.

1. Civil Appeals Nos. 636 and 580 of 1931 are connected and will be disposed of together. They arise out of two suits for redemption of mortgages. The material facts were briefly as follows: Two persons, named Shiv Dayal and Mangal, mortgaged the property in dispute in favour of Dulo Mal for L 80 on 27th October 1852. They incurred a further charge of L 43 on the same property on 10th May 1865. On the 11th of May 1869 the mortgagee Dulo Mal mortgaged the same property in favour of Kishen Chand for L 123. Shiv Dayal and Mangal died without issue and their heir Dhanna Mal transferred the equity of redemption to one Bhana Mal. One of the suits for redemption referred, to above was instituted by Bhana Mal; the other suit was instituted by Ralla Ram, a descendant of Dulo Mai and was for the redemption of the mortgage effected by Dulo Mal in favour of Kishen Chand on 11th May 1869. Both these suits were decreed by the trial Court. Appeals were preferred to the learned District Judge by Ralla Ram and Bhana Mai respectively. As regards the former appeal the learned District Judge held that the appeal was not competent, inasmuch as it was filed only from the preliminary decree while a final decree had also been passed before the institution, of the appeal. The learned District Judge relied upon A.I.R. 1928 Lah. 73 in support of this view. The learned Judge, however, also went into the facts of the case and decided against the appellant on the merits. In the latter appeal, the learned Judge pointed out that the decree in favour of Ralla Ram had become infructuous, inasmuch as Bhana Mai had also been given a decree for redemption of the original mortgage by Shiv Dayal and Mangal. Subject to this observation the appeal of Bhana Mal was dismissed. From these decisions Ralla Ram and Bhana Mal had preferred second appeals.

2. In the appeal by Ralla Ram the learned Counsel who appeared for him contended that the learned District Judge's view that the appeal before him was not competent though supported by A.I.R. 1928 Lah. 73, was not sound as that decision was opposed to some later "Full Bench rulings of other High Courts. He therefore requested that a reference might be made to a larger

Bench for reconsideration of the point; but as the learned District Judge has gone into the facts of the case and decided on the merits, I do not consider it necessary to make any reference on this question of law as I have come to the conclusion that the learned District Judge's decision was correct on the merits and must be maintained. As regards the facts of the case, the only point which the learned Counsel urged was that the suit was time barred. The mortgage was of the year 1862, as stated already; the suit was instituted on the 8th of May 1929. In order to bring the suit within limitation reliance was placed on an acknowledgment of the mortgage contained in the deed executed by Dulo Mal in favor of Kishen Chand on 11th May 1869. The learned Counsel for Ralla Ram has urged that the recital in the mortgage deed of 1869 was only descriptive and did not amount to an acknowledgment of liability within the meaning of Section 19, Limitation Act. This contention does not appear to me to be sound. In the first place, the question whether Dulo Mal's intention was to acknowledge an existing liability or not is one of fact and the finding of the learned District Judge, is not, I think, one which can be interfered with in second appeal. Secondly, it appears to me that the recital in the mortgage deed to the effect that the property had been mortgaged in 1862 in favor of Dula Mai and that he was re-mortgaging it in favour of Kishen Chand did amount to an acknowledgment of the existence of the mortgage at the time. The view taken by the learned District Judge is supported by *Jalli v. Pir Baksh*¹ on which he has relied. The learned Counsel for appellant cited *Dharma Vithal v. Govind Sadvalkar*² but this ruling was considered and distinguished in *Jalli v. Pir Baksh [1897] 9 P.R. 1897(supra)*. There are other authorities also to support the same view: see for example *Genda Mal v. Ilahi Baksh*³ and *Hari Chand v. Phiraya Ram*⁴ I therefore see no reason to interfere with the learned District Judge's decision and dismiss the appeal of Ralla Ram with costs.

3. Coming now to the appeal of Bhana Mal, the only point which was urged was that the learned District Judge has himself remarked that the decree in favor of Ralla Ram had become infructuous and that under the circumstances Bhana Mal's appeal should have been accepted and Ralla Ram's suit dismissed. But at the time the suit was instituted-Ralla Ram had a right of redemption. It was further possible that Bhana Mal might not have complied with the terms of the decree for redemption which was passed in his favor and in that case Ralla Ram could have redeemed the property on the basis of the decree passed in his favor. It seems to me therefore, that the learned District Judge was right in rejecting the appeal as he did.

4. It has been pointed that there is a slight error in the decree-sheet, inasmuch as the number of the suit has not been correctly given. The number of Ralla Ram's suit is 363/252 and not 359 as given in the decree-sheet. The number should be corrected. The mistake is purely a clerical one. The appeal is dismissed with costs in other respects.

¹[1897] 9 P.R. 1897

³[1909] 1 I.C. 510

²[1884] 8 Bom. 99

⁴[1911] 11 I.C. 377