

PATNA HIGH COURT

Ram Jatan Singh

Vs

Lagandeo Singh

A.F.A.D. No. 41 of 1956

(V. Ramaswami, C.J. and Kanhaiya Singh, J.)

13.12.1960

JUDGMENT

V. Ramaswami, C.J.

1. In the suit out of which this, appeal arises the plaintiff prayed for redemption of two zarpeshgi deeds, one dated the 18th of February, 1879, execute by Tilak Chamar. son of Milap Chamar, and the other dated the 18th of February, 1879, executed by Dipa Chamar, son of Moti Chamar, in favour of Jugeshwar Singh. grandfather of defendant Lagandeo Singh. In the first zarpeshgi deed the consideration was Rs. 64, and the property mortgaged was 2 bighas and 12 dhurs of land. The second zarpesbgi deed was executed for a consideration of Rs. 61 with regard to 2 bighas 10 kathas 8 dhurs of land. There were subsequent mortgages of the same property on the 11th of Baisakh 1291 and the 25th of Jeth, 1299, Fasli. The trial Court granted a decree for redemption in favour of the plaintiff, but the lower appellate Court has dismissed the suit on the ground that the suit was barred by limitation.

2. The main argument put forward on behalf of the plaintiff-appellant in this Court is that the lower appellate Court was erroneous in holding-that the suit was barred by limitation. It was pointed out that on the 9th of September, 1919, Jadunandan Singh, father of defendant No. 1, executed a sub-mortgage of the land in favour of Firangi Singh and Ramdahin Singh. This document is Exhibit 2. It is recited in the body of the document that the property given in mortgage was zarpeshgi property of Jadunandan Singh and he was still holding the property as zarpeshgidar on the date of the document. In the Schedule attached, to the document there is an averment that the property was comprised in Khata No. 88 and Khata No. 90 which was the kasht property of Nathu Chamar, Juman and Tilak Chamar, and Jadunandaji Singh was the. zarpeshgidar. Exhibit 2(a) is another document of sub-mortgage executed by Jadunandan Singh on the 1st of June, 1921, in favour of Firangi Singh and Ramdahin Singh. There is a recital in this document also that kasht lands of Juman Chamar and Nathuni Chamar, of which Jadunandan Singh was the JKairpdshgidar, were, being conveyed by this document. The argument on behalf of the appellant is that the recital in these two sub-mortgages constitutes in law an acknowledgment within the meaning of Section 19 of the Limitation Act, and, therefore, the present suit for redemption was not barred. On behalf of the respondents it was submitted that

Exhibits 2 and 2(a) were not sub-mortgages. In the course of his argument learned Counsel for the respondents read the contents of the documents, and having perused the documents we are satisfied that the contention on behalf of the appellant is correct, and the true effect of these two documents, Exhibits 2 and 2(a), is that they are sub-mortgages of the properties which the plaintiff now seeks to redeem. The admission of Jadunandan Singh, father of defendant No. 1, in these two documents that the property was his zarpesbgi property is, in our Opinion, sufficient acknowledgment under Section 19 of tile Limitation Act, and accordingly the suit brought by the plaintiff for redemption of the property is not barred. In our opinion, the present case is governed by the principle laid down by the Full Bench of the Bombay High Court in *Motilal Jadav v. Samal Bechar*¹, where in similar circumstances it was held that a statement by the mortgagee with regard to the mortgaged property in a document of sub-mortgage was acknowledgment within the meaning of Section 19 of the Indian Limitation Act and saved the suit for redemption from being barred. That principle has been applied by this High Court in *Bachu Lal v. Jang Bahadur Rai*², where it was similarly held that a sub-mortgage effected by the original mortgagee, which clearly recited the' mortgagee's rights and liabilities under the original mortgage was an acknowledgment within the meaning of Section 19 of the Limitation Act. In our opinion, the principle laid down in this decision applies to the present case and it must, accordingly be held that the suit for redemption is not barred by limitation and the lower appellate Court was erroneous in law in holding that the suit was barred. For these reasons we hold that this appeal must be allowed, the decree of the lower appellate Court must be set aside, and the decree for redemption passed by the trial Court must be restored.

3. We accordingly allow this second appeal with costs.
Appeal allowed.

Cases Referred.

¹ AIR 1930 Bom 466

² AIR 1939 Pat 427