

PRIVY COUNCIL.

P. C. *
1884

December 11.

RAM DIN (PLAINTIFF) v. KALKA PRASAD (DEFENDANT).*

[On appeal from the High Court for the North-Western Provinces]

Limitation—Act IX of 1871 (Limitation Act), sch. ii., arts. 65 and 132—Periods respectively applicable to personal demands, and to claims charged on immoveable property.

That there is a personal liability upon an instrument charging a debt upon immoveable property, does not carry with it the effect that the period of limitation fixed for personal demands by Act IX of 1871 is extended ; by reason of this demand being, thereby, brought within the meaning of art. 132 of sch. ii of that Act, which applies to claims “for money charged upon immoveable property.”

A mortgagee of lands sought, after the lapse of more than six years from the date when the mortgage-money was payable, to enforce two distinct remedies, the one against the property mortgaged, and the other against the mortgagor personally, on the contract to repay the mortgage-money.

Held that art. 132, above-mentioned, applied only to suits to raise money charged on immoveable property, out of that property ; and that the twelve years' bar did not apply to the personal remedy, as to which the shorter period prescribed in art. 65 of the same schedule applied.

APPEALS consolidated and heard as one, from decrees (4th August, 1881) of the High Court reversing decrees (2nd December, 1880) of the District Judge of Farukhabad, which reversed decrees, (24th September, 1880) of the Subordinate Judge of Farukhabad, and restoring the latter.

The appellants, Ram Din, together with one Ganesh Singh, who died during the pendency of these appeals, jointly instituted two suits in the Court of the Subordinate Judge of Farukhabad against the respondent, Kalka Prasad, upon two several mortgage-bonds to recover the amounts due thereon, for principal and interest, out of the immoveable property thereby mortgaged, and also to recover the same from the mortgagor personally.

The respondent by the first mortgage, dated the 25th January, 1870, mortgaged to Ram Din and Ganesh Singh, his interest in a mauza in pargana Kanauj to secure repayment of Rs. 1,300, with interest at one per cent. per mensem, on the 13th June, in that year. By the second mortgage he charged his pakka house in Makrannagar, pargana Kanauj, with Rs. 900, repayable in a

* *Present* :—Lord FITZGERALD, Sir B. PEACOCK, Sir R. P. COLLIER, Sir R. COVEN, and Sir A. HOBHOUSE.

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year, at the same interest. By both the mortgage instruments the mortgagor agreed that in default of payment at due date, the mortgagees should be at liberty to sue for their whole money in a lump sum, from the mortgagor personally, as well as to realize it from the mortgaged property. Neither bonds having been paid, these suits were brought on the 21st and 23rd August, 1880, respectively. Besides other defences not now material, the defendant, in each of the suits, contended that no decree could be made against him personally, more than six years having elapsed from the date of execution of the bonds.

The Subordinate Judge in his judgment remarked that the suit contained two distinct claims; the one, a claim against the immoveable property mortgaged, to which claim twelve years' limitation applied; the other a claim against the defendant personally, to which the limitation of six years was applicable. He held that the latter claim was barred. The money was due in 1870, and the suit was brought in 1880. The decree must, therefore, be limited to money to be obtained by the sale of the property mortgaged; the defendant's estate, not mortgaged, being exempted.

On appeal, the District Judge of Farukhabad reversed this decision, holding that in the case of a bond stipulating, not merely for the personal security of the debtor, but also charging the immoveable property mentioned therein, the period of limitation was twelve years under art. 132; and that therefore the decree could be not only against the mortgaged property, but also to enforce the personal liability.

The High Court (SIR R. STUART, C. J., and TYRRELL, J.) held, on a second appeal, that in this suit the plaintiff could enforce the debt against the immoveable property upon which it was charged, but not against the defendant personally. Accordingly, the decree of the first Court was restored.

On this appeal,

Mr. *R. V. Doyne*, appeared for the appellant, Ramdin, who proceeded as surviving joint plaintiff.

The respondent did not appear.

For the appellant the question,—were the decrees, and consequently execution, to be limited to the mortgaged property, or to

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extend to the personal estate of the defendant—was argued. The period fixed in art. 132 applied to the remedy, which was two-fold, the borrower having chosen to give a security which could only have one period of limitation, *viz.*, the 12 years' bar. There was but one cause of action, and to this but one rule of limitation could apply. Reference was made to *Mannu Lal v. Pique* (1).

After the argument for the appellant had been heard, their Lordships' judgment was delivered by

LORD FITZGERALD.—This is a suit instituted by the mortgagee against the mortgagor. He seeks to enforce a mortgage not under seal dated 25th January, 1870, by which certain property was pledged to him for a mortgage debt; he alleges that the defendant has failed to pay both principal and interest, and prays that the principal and interest may be enforced against the mortgaged property, and also by rendering the person of the defendant and his other property liable. Therefore, although it is a mortgage suit, there are two distinct remedies sought, one against the mortgaged property, and the other by rendering the other property and the person of the defendant liable. The defendant does not dispute the mortgage. He raises no question as to the right of the plaintiff to have the mortgaged property sold, but he says that the remedy sought against him personally, and against his other property, is barred by the operation of the Limitation Act of 1871.

Their Lordships turn then to see what the mortgage transaction was. It is very plain and very simple. The instrument recites the mortgage of certain property for Rs. 1,300 to the present plaintiff, that the interest should be at the rate of one per cent per mensem, and the principal and interest to be repaid at the end of Jaith Sambat 1927. The instrument then says.—“I have received the mortgage money in full. I therefore covenant that if I fail to pay the principal with interest on the promised date, the mortgagees will be at liberty to recover through Court their whole money in a lump sum from me or the mortgaged property.” The mortgagor thus gives the mortgagee a pledge of certain fixed immovable property, and also gives as a further security his personal

(1) 9 B. L. R., 175, in note; 10 W. R., 379.

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bond or covenant. A period of nearly ten years elapsed from the time at which the mortgage-money with interest became payable before the suit was instituted. The question submitted for their Lordships' consideration is, whether the lesser period of limitation, three or six years as the case may be, has barred the personal remedy against the mortgagee, even though the mortgage remains in full force, as against the mortgaged property.

Their Lordships are of opinion that the judgment of the High Court is correct. The Judge of the primary Court held that the personal demand was barred. The Judge of the District Court held the contrary—that there could be but one period of limitation, and that was a period of 12 years, applicable to the mortgage of fixed property, which carried with it and gave the same 12 years for the enforcement of the personal security. Their Lordships are of opinion that the District Judge is wrong in point of law. There are two remedies distinctly sought in the plaintiff's petition, the one against the mortgaged property, the other against the person and against the other property of the defendant. As to the mortgaged property there is now no question. Their Lordships are of opinion that the Law of Limitation, which says a bond for money must be enforced within a certain date, applies to the specific demand here for a personal remedy against the defendant. The plaintiff can have no personal remedy—his remedy against the person of mortgagor is barred, but his right remains to enforce his demand against the mortgaged property. As far as personal demands, including simple bonds, are concerned, the language of the Act is plain and clear. S. 4 of the Act of 1871 directs that every suit instituted after the period prescribed therefor in the second schedule shall be dismissed. The second schedule places simple money demands generally under the three years' limitation, and under No. 65 the same limitation applied to a single bond, and under the same limitation are placed bills of exchange, arrears of rent, and suits by mortgagors to recover surplus from mortgagee. The six years' limit embraces suits on foreign judgments and some compound registered securities. The 12 years' period is made applicable principally to suits in respect of immoveable property, though it also applies to judgments and recognizances in India. But the counsel for the ap-

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pellant relied upon the language of the 132nd article of the second schedule, "For money charged upon immoveable property, 12 years." His contention was that that period of 12 years applied to every remedy which the instrument carried with it, and gave 12 years for the personal remedy against the mortgagor as well as against the mortgaged property.

Looking at the previous language with reference to personal suits, and at the language of art. 132, their Lordships think great inconveniences and inconsistencies would arise if they did not read the latter as having reference only to suits for money charged on immoveable property to raise it out of that property. That seems to their Lordships what the Legislature intended, and they are therefore of opinion that the decision of the High Court was right.

That being so, their Lordships will humbly advise Her Majesty to affirm the decree appealed from. There being no appearance for the respondent here, there will be no costs.

Their Lordships desire to add that their opinion on this appeal also applies to the separate appeal on the mortgage-bond of the 10th June, 1871.

Decree affirmed.

Solicitor for the appellant:—Mr. T. L. Wilson.

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RAM DAYAL (PLAINTIFF) v. MAITAB SINGH AND OTHERS (DEFENDANTS). *

[On appeal from the High Court for the North-Western Provinces.]

*Irregularity in warrant of attachment preceding execution-sale—
Act VIII of 1859, s. 222.*

An execution-sale of the right, title, and interest in land was set aside by the Court, on the ground that the warrant for the execution of the decree and order of attachment of the property sold had not been signed by the Judge, but by the Munsarim of the Court; and at a second sale the property was sold to other purchasers, who, as well as the judgment-debtor, were sued by the purchaser at the first sale for a declaration of his right to have the first sale confirmed.

The High Court having held that, with reference to s. 222 of Act VIII of 1859, the first sale had been rightly set aside, an appeal to the Judicial Committee was dismissed with costs.

* *Present*:—Lord FITZGERALD, Sir B. PEACOCK, Sir R. P. COLLIER, Sir R. COUCH, and Sir A. HOBHOUSE.