

circumstances we consider that the decision of the court below was correct and ought to be confirmed.

We accordingly dismiss the appeal with one set of costs.

Appeal dismissed.

APPELLATE CIVIL.

1913

COLLECTOR OF
MIRZAPUR
v.
BHAGWAN
PRASAD.

1913

January, 22

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.

JAI SINGH PRASAD (PLAINTIFF) v. SURJA SINGH AND OTHERS

(DEFENDANTS).*

Act No. IX of 1908 (Indian Limitation Act), section 31—Limitation—Mortgage—Suit on mortgage barred under Limitation Act of 1871—Mortgagee's rights not revived by present Act.

Held that section 31 of the Indian Limitation Act, 1908, cannot be construed as reviving rights already time-barred under the Limitation Act of 1871.

THIS was a suit for sale on a mortgage, dated the 19th of July, 1863. The money secured by the mortgage became payable on the 19th of June, 1864, and the suit was instituted on the 6th of August, 1910. The court of first instance dismissed the suit as being time-barred under the Indian Limitation Act of 1871. The plaintiff appealed to the High Court, relying on section 31 of the Limitation Act of 1908.

Munshi Jang Bahadur Lal, for the appellant.

Mr. A. H. C. Hamilton, for the respondents.

RICHARDS, C. J. and BANERJI, J. :—This appeal arises out of a suit on a mortgage, dated the 19th of July, 1863. The money secured by it became payable on the 19th of June, 1864. The present suit was instituted on the 6th of August, 1910. The court below has dismissed the suit as being barred by time. In our opinion this view was correct. Under the Limitation Act of 1871, which governed the present mortgage, a suit could only be brought within twelve years of the time the money became due, that is to say, within twelve years from the 19th of June, 1864. That Act contained no provision similar to article 147 of Act XV of 1877. It is, therefore, quite clear that before the passing of the last mentioned Act the claim under the bond in suit was barred by limitation. It is manifest from the provisions of section 2 of the

* First Appeal No. 422 of 1911 from a decree of Rama Das, Additional Subordinate Judge of Azamgarh, dated the 3rd of July, 1911.

1913

JAI SINGH
PRASAD
v.
SURJA SINGH.

Act of 1877 that no right which had become barred under the Act of 1871, was thereby revived. No doubt for some time this High Court considered that a suit might be instituted in respect of mortgages, which were governed by the Act of 1877, at any time within sixty years, but their Lordships of the Privy Council have considered this view erroneous—see *Vasudeva Mudaliar v. Srinivasa Pillai* (1). This last mentioned decision, and the hardship which was supposed to follow in consequence, led to the introduction of section 31 of the present Act, which provides that, notwithstanding anything contained in it, or in the Limitation Act of 1877, a suit for sale may be instituted within two years from the date of its passing or within sixty years from the date when the money secured by the mortgage becomes due, whichever period expires first. The appellant relies upon this section, and contends that it is clear from the mention of sixty years that it was intended to apply to cases like the present, even though they were already barred by the provisions of the Act of 1871. We cannot agree with this contention. It is impossible to hold that by the introduction of this section the Legislature intended to revive rights which had already become long since barred under the Act of 1871. The section expressly refers only to the provisions of Act XV of 1877 and not to any earlier Act. It is quite clear that if the plaintiff had instituted the suit whilst Act XV of 1877 was still in force it would have been time-barred. The enactment of section 31 certainly can give him no higher title. We dismiss the appeal with costs.

Appeal dismissed.

1913

January, 23.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.

DURGA KUNWAR AND OTHERS (DEPENDANTS) v KALI CHARAN

(PLAINTIFFS)*

Sale—Covenant for title—Claim made against purchaser compromised before suit brought—Right of purchaser to claim indemnity from covenantor.

The purchaser of immovable property concerning which the seller has covenanted to indemnify the purchaser in the event of the title proving defective is not bound to wait until a suit is brought and he is deprived of the property by reason of a decree passed therein, but, in a claim which the purchaser has

* First Appeal No. 243 of 1911 from a decree of Baijnath Das, Officiating Subordinate Judge of Bareilly, dated the 19th of August, 1911.

(1) (1907) I. L. R., 30 Mad., 426.