

Before Mr. Justice Walsh and Mr. Justice Stuart.

GAJADHAR (APPLICANT) v. MEGHA AND ANOTHER (OPPOSITE PARTIES).^{*}
Act No. XIX of 1841 [Succession (Property Protection) Act], section 18—
Appeal.

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No appeal will lie from the decision of a District Judge in a summary suit under Act No. XIX of 1841.

THE facts of the case material for the purposes of this report are as follows :—

One Gaya died leaving a widow. On her death the respondent, Megha, came into possession of her property, valued at several thousands of rupees. The appellant, Gajadhar, who claimed to be the nearest reversioner, applied to the District Judge under Act No. XIX of 1841 [The Succession (Property Protection) Act] for the appointment of a curator. The Judge issued notice to Megha, but ultimately dismissed the application on account of the delay on the part of Gajadhar to produce his evidence.

Gajadhar appealed.

Pandit K. N. Laghate, for the appellant.

Munshi Shiva Prasad Sinha (with him Munshi Jang Bahadur Lal), for the respondents.

WALSH and STUART, JJ.:—The learned counsel for the respondents takes a preliminary objection that no appeal lies under the provisions of section 18 of Act XIX of 1841. This objection must prevail. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Lyves and Mr. Justice Gokul Prasad.

NARAIN RAO KALIA AND OTHERS (DEFENDANTS) v. MANNI KUNWAR
(PLAINTIFF) †

Act No. IX of 1903 (Indian Limitation Act), section 19—Acknowledgment of liability—Mukhtar-a'am—Authority of mukhtar-a'am to acknowledge liability on behalf of principal.

It cannot be assumed that a mukhtar-a'am has power to acknowledge liability within the meaning of section 19 of the Indian Limitation Act; but

* First Appeal No. 201 of 1921, from an order of B. J. Dalal, District Judge of Allahabad, dated the 18th of November, 1921.

† Second Appeal No. 1150 of 1919, from a decree of Kameshwar Nath, Officiating District Judge of Ghazipur, dated the 28th of October, 1918, reversing a decree of Sudershan Dayal, Additional Subordinate Judge of Ghazipur, dated the 9th of July, 1917.

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such a liability can only be fastened upon the principal by a person duly authorized in this behalf, that is, who has been given authority to make such an acknowledgment of liability. *Beti Maharani v. The Collector of Etawah* (1) and *Gokul Singh v. Saheb Singh* (2) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Babu *Sital Prasad Ghosh* and Pandit *K. N. Laghate*, for the appellants.

Munshi *Gulzari Lal* and Munshi *Huribans Sahai*, for the respondent.

RYVES and GOKUL PRASAD, JJ.:—This is a defendant's appeal arising out of a suit for a declaration of title as mortgagor by the plaintiff. The defendants, who are now recorded as zamindars, sued to eject the plaintiff, Lalji Singh, from a certain holding under section 58 of the Tenancy Act. The plaintiff, Lalji Singh, pleaded in defence that he was the real owner of the said holding, that the possession of the defendants was merely that of mortgagees on his behalf and that they had, therefore, no right to bring a suit for his ejectment. On the 3rd of February, 1916, the Revenue Court referred him to the Civil Court to have his title declared, and hence he brought the present suit. The plaintiff's allegation was that the defendants were purchasers of mortgagee rights and that they had acknowledged the mortgage in the beginning of the settlement of 1882. The defendants pleaded in reply that the suit was barred by the six years' rule of limitation; that the mortgage was made by the plaintiff's predecessor in title on the 27th of March, 1819, to Gur Dayal; that Gur Dayal transferred his rights to one Ram Kumar Mahant by two deeds of the 19th of August, 1868, and the 1st of September, 1869; that the defendants' predecessor in title purchased these rights at auction on the 21st of November, 1874; that in the meanwhile, on the 20th of March, 1854, the Maharaja of Benares had purchased the rights of some of the mortgagors; that on the 22nd of May, 1885, the Maharaja of Benares had taken an agreement from the remaining mortgagors, that is, those whose rights were not purchased, enabling him to bring a suit to redeem the mortgage, promising in

(1) (1894) I. L. R., 17 A., 198. (2) (1916) 15 A. L. J., 121.

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exchange some rights to the remaining mortgagors; that on the 10th of June, 1885, the Maharaja of Benares brought a suit for redemption and to this suit the present plaintiff, Lalji Singh, was made a defendant; that in the written statement Lalji Singh and others said that they had relinquished all their rights in favour of the plaintiff, Maharaja of Benares, and had been unnecessarily impleaded; that this suit was dismissed by the first court, but the High Court remanded it and it was decreed after remand; that the Maharaja was given time to deposit the mortgage money, but he failed to deposit it in time, and hence the suit formally stood dismissed and the Maharaja's right of redemption disappeared; that on the 6th of March, 1896, the mortgagees applied for mutation of names and succeeded, and the plaintiff's name was removed from the column of owners and entered in the column of tenants; that in the year 1909, the mortgagees sued the plaintiff for enhancement of rent; that Lalji Singh, the present plaintiff, then set up a defence that he was not a tenant but a mortgagor; that this defence was repelled and on the 29th of April, 1910, rent was enhanced; that in the year 1913, Lalji Singh, plaintiff, sued the contesting defendants for redemption of a mortgage of Rs. 100, which was a different mortgage, but the suit was dismissed and the dismissal was ultimately confirmed by the High Court on the 14th of July, 1915; and that now the plaintiff brought the present suit, which did not lie. On these pleadings the parties went to trial. The first court came to the conclusion that this suit, which had been brought within three months of the order of the Revenue Court passed under section 199, clause (a), of the Tenancy Act, was within time; but it held that the plaintiff had failed to prove specifically the mortgage, and, therefore, was not entitled to a declaration. On these findings it dismissed the plaintiff's suit. The plaintiff went up in appeal, and the learned Judge of the lower appellate court came to the conclusion that the verification of the wajib-ul-arz of 1882 by the *mukhtar-a'am* of the defendants mortgagees amounted to an acknowledgment of liability within the meaning of section 19 of the Limitation Act, and that the suit was within time, and in the result he gave the plaintiff the declaration he wanted. The defendants come here

in second appeal. The first plea taken by their learned advocate is that there was no subsisting mortgage for which the plaintiff could be granted a declaration. The next contention raised on behalf of the appellants was that the plaintiff had lost his equity of redemption by virtue of the agreement into which he entered with the Maharaja of Benares in 1885, and it was also contended in the alternative that as the plaintiff had already transferred his rights in the equity of redemption to the Maharaja of Benares, even if a separate suit could lie for redemption, the suit of the Maharaja of Benares having failed, Lalji Singh could not bring such a suit until he had got back by conveyance from the Maharaja of Benares the right which had been transferred to him by the agreement of 1885. On the last occasion when the appeal came on for hearing before us we referred the following issue of fact to the court below: "Whether Lalji Singh, the present plaintiff, respondent, had at the date of the suit any rights left in the equity of redemption." The learned Judge of the court below found that there was no acknowledgment in the settlement of 1882, as it was not shown that the *mukhtar-a'am* of the mortgagees who verified the *wajib-ul-arz* was duly authorized to acknowledge the liability within the meaning of section 19 of the Indian Limitation Act. He also found that whatever right Lalji Singh had in the equity of redemption, it was not lost because of the transfer of 1885. We agree with the first finding that it cannot be assumed that a *mukhtar-a'am* has power to acknowledge liability within the meaning of section 19 of the Indian Limitation Act, but that such a liability can only be fastened upon the principal by a person duly authorized in this behalf, that is, who has been given authority to make such an acknowledgment of liability. In this connection, see the Privy Council decision in *Beti Maharani v. The Collector of Etawah* (1) and *Gokul Singh v. Sahab Singh* (2). In this case there is nothing to show that the *mukhtar-a'am* who verified the *wajib-ul-arz* in 1882 was authorized to admit the liability of the mortgagees to the mortgagors. On this finding of the lower appellate court this appeal must succeed. We allow the appeal, set aside the decree of the lower appellate court and restore that of the court of first instance with costs in all courts.

Appeal allowed.

(1) (1894) I. L. R., 17 All., 198.

(2) (1916) 15 A. L. J., 121.

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