

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Moti Sagar,

QADAR BAKHSH ETC. (PLAINTIFFS) Appellants,

versus

MANGHA MAL ETC. (DEFENDANTS) Respondents.

Civil Appeal No. 521 of 1920.

Indian Registration Act, XVI of 1908, section 17—Unregistered sale deed—whether admissible to prove the nature of possession—Adverse possession by a mortgagee.

Held, that a sale deed, although inadmissible for want of registration to prove title, may be referred to in order to ascertain the nature of the possession sought to be disturbed.

Varada Pillai v. Jeevarathammal (1); Karnam Kandasami v. Chinnabba (2), Musigadu v. Maneam Gopalu Reddy (3), Mahendra Bahadur Singh v. Chandarpal Singh (4), Jhamplu v. Kutramani (5), and Ram Singh v. Basti (6), referred to.

Held also, that a mortgagee can set up adverse possession; if his possession at its inception was that of a trespasser.

Jira Khan v. Lakhmi Chand (7), Indar v. Asa Singh (8), Amir Khan v. Nadir Ali (9), Lehna Singh v. Santa Singh (10); and Khiarajmal v. Daim (11), referred to.

Second appeal from the decree of Rai Sahib Lala Ganga Ram, Soni, District Judge, Multan, dated the 1st December 1919, modifying as to costs only, that of Khan Ahmad Husain Khan, Munsif, 1st Class, Multan, dated the 15th February 1919, dismissing the plaintiffs' suit.

NIJAZ MUHAMMAD, for Appellants.

HAR GOPAL, for Respondents

The judgment of the Court was delivered by—

BROADWAY J.—The suit giving rise to this appeal was filed by Qadar Bakhsh and three others and was for possession of certain land by redemption. It was

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| (1) (1919) I. L. R. 43 Mad. 244 (P. C.). | (6) (1918) 48 Indian Cases 447. |
| (2) (1920) I. L. R. 44 Mad. 253. | (7) 232 F. L. R. 1911. |
| (3) (1920) 63 Indian Cases 215. | (8) 65 P. R. 1908. |
| (4) (1920) 63 Indian Cases 284. | (9) (1922) 68 Indian Cases 733. |
| (5) (1917) I. L. R. 39 All. 696. | (10) (1911) 13 Indian Cases 852. |
| (11) (1904) I. L. R. 32 Cal. 296 (P. C.). | |

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alleged that the plaintiffs' father and uncle had mortgaged the land in suit on the 18th of August 1880 for Rs. 200 in favour of Kanhaya Lal, father of the defendants; that half of the land mortgaged had been redeemed, and that the remaining half was redeemable on payment of Rs. 100. The defence set up was that the mortgage of 1880 had come to an end in 1884 when the father of the plaintiffs, alone, mortgaged his share by a mortgage deed, dated the 7th of March 1884, this subsequent mortgage being without possession and containing no clause under which the mortgagees could obtain possession. Further, it was pleaded that in 1888 Allah Ditta, father of the plaintiffs, had sold the land in suit to one of the defendants for Rs. 600, and that possession had been obtained under that sale and given effect to in the mutation proceedings in 1890. The trial Court dismissed the plaintiffs' suit holding that the defendants had been in adverse possession for a period of over twelve years, and that the plaintiffs had failed to show that the land they sought to redeem was the identical land which had been mortgaged by Allah Ditta. It was held that the deed of sale propounded by the defendants was inadmissible in evidence for any purpose whatsoever owing to its not having been registered.

The plaintiffs appealed, but the learned District Judge maintained the decree of the trial Court, although on different grounds. He held that the plaintiffs had proved that the land in suit was identical with the land mortgaged to Kanhaya Lal under the mortgage, dated the 7th of March 1884. He further held that the deed of sale of 1888 was admissible in evidence as it did not require to be registered under sections 17 of the Registration Act. Finally, he held that the mortgage of 1880 had come to an end and had been superseded by the mortgage of 1884, that under this mortgage of 1884 the mortgagor continued in possession up to 1888 when the defendants obtained possession not as mortgagees but as vendees, thus holding adversely to the original owner this adverse title being rendered unassailable by the efflux of time.

The plaintiffs have now come up to this Court in second appeal through Mr. Niaz Muhammad and we have heard Mr. Hargopal on behalf of the respondents. For

the appellants it has been urged that, inasmuch as the respondents were mortgagees, their possession must be regarded as that of mortgagees, and, therefore, no adverse title could be, or had been proved. In support of this attention was drawn to *Jiwa Khan v. Lakshmi Chand* (1), *Indar v. Asa Singh* (2), *Amir Khan v. Nadir Ali* (3), *Lehna Singh v. Santa Singh* (4), *Khierajmal v. Dain* (5). While we are in accord with the general principles enunciated in those decisions we are unable to see that they support the whole of Mr. Niaz Muhammad's contention. In *Jiwa Khan v. Lakshmi Chand* (1) it was specifically pointed out that it would be going too far to say that in no possible case could a mortgagee set up an adverse title to the mortgaged property. We think that it is to be decided on the facts of each case whether or not the circumstances established an adverse title. In the present case, we may say at once that, in our opinion, the deed of sale is inadmissible in evidence for want of registration, and the respondents, therefore, cannot base any title to the land under that deed.

There is, however, authority for the view that a document, although inadmissible for want of registration, to prove title, may be referred to in order to ascertain the nature of the possession sought to be disturbed, see for instance—*Varada Pillai v. Jeevarathnammal* (6), *Karnam Kandasami v. Chinnabba* (7), *Musigadu v. Maneam Gopalu Reddy* (8), *Mahendra Bahadur Singh v. Chandarpal Singh* (9), *Jhampu v. Kutramani* (10) and *Ram Singh v. Basti* (11).

We think that in this case the deed of sale may be referred to for the sole purpose of determining the nature of the possession taken by the respondents in 1888. On doing so we find that this document supports the finding arrived at by the learned District Judge to the effect that the mortgagees' possession in 1888 was not as mortgagees, but under colour of a deed of sale. This deed of sale, not having been registered, created no title in favour of the respondents, thus leaving them in the position of trespassers and as their possession has ex-

(1) 232 P. L. R. 1911.

(2) 65 P. R. 1908.

(3) (1922) 68 Indian Cases 733

(4) (1911) 13 Indian Cases 852.

(5) (1904) I. L. R. 32 Cal. 296 (P.O.)

(6) (1919) I. L. R. 43 Mad. 244 (P. O.).

(7) (1920) I. L. R. 44 Mad. 253.

(8) (1920) 63 Indian Cases 215.

(9) (1920) 63 Indian Cases 284.

(10) 1917 I. L. R. 39 All. 696.

(11) (1918) 48 Indian Cases 447.

tended for over a period of twelve years, they have now become full owners of the land and their possession cannot be disturbed. It was held in *Jiwa Khan v. Lakhmi Chand* (1) that a mortgagee can set up adverse possession if his possession at its inception was that of a trespasser.

We accordingly dismiss this appeal with costs.

A. R.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Martineau.

BENI PARSHAD (PLAINTIFF) Appellant,

versus

Mst. GURDEVI (DEFENDANT) Respondent.

Civil Appeal No. 2544 of 1919.

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Hindu Law—Joint Hindu family—partition of a part of the joint property—effect of.

Held, that when the members of a joint Hindu family effect a partition, even though it is a partition of only a portion of the joint property, they cease to be members of a joint Hindu family.

Gavrishankar v. Atmaram (2), not followed.

First appeal from the decree of Sheikh Ruknuddin, Senior Subordinate Judge, Ambala, dated the 29th August 1919, dismissing the plaintiff's suit.

MANOHAR LAL, for Appellant.

JAGAN NATH, for Respondent.

The judgment of the Court was delivered by—

MARTINEAU J.—The plaintiff is the brother, and the defendant, *Mussammatt Gurdevi*, is the widow of *Atma Ram*, a *bania* of *Jagadhri*, who died on the 9th

(1) 232 P. L. R. 1911.

(2) (1893) I. L. R. 18 Bom. 511.