

The present application is made to collect the debts due in respect of the properties left by Juggunauth while they were under the management of the alleged adoptive mother Doorgamonee. The petitioner cannot possibly have a *locus standi* under the provisions of Act XXVII of 1860. The Act applies to cases where applications are made by representatives of deceased Hindus, Mahomedans, and others not usually designated as British subjects, to collect the debts which are payable in respect of the estates of such deceased persons. In this case it would appear, upon the applicant's own showing, that the debts were payable to himself, because they had accrued due during his minority, while his estate was under the management of Doorgamonee, his alleged adoptive mother. It is quite clear, therefore, that there was no necessity for applying for a certificate under Act XXVII of 1860, and no right to obtain one.

Upon this ground alone we think that the order of the lower Court ought not to stand. We, accordingly, reverse that order with costs.

Appeal allowed.

Before Mr. Justice Ainslie, and Mr. Justice Broughton.

DEOLIE CHAND AND OTHERS (DECREE-HOLDERS) v. NIRBAN SINGH
(JUDGMENT-DEBTOR).*

1870
NARAIN MAL
v.
KOORR
NARAIN
MYTEE.

1870
March 25.

Mortgage—Sale to Mortgagee of Portion of Mortgaged Property—Resale to Mortgagee—Decree—Equitable right to whole of Property Mortgaged.

A mortgaged a fourteen-annas share in a certain mouza to B. B obtained a decree on his mortgage-bond. Subsequent to this decree B bought from A a two-annas share in the mouza, but at a later period resold the share to A. In execution of another decree B had obtained against A the twelve-annas share in the mouza belonging to A was put up for sale and purchased by B; B next applied for execution of the decree he had obtained on the mortgage-bond, seeking to sell the two-annas share which remained in the mouza as part of the property mortgaged to him,—

Held, that so long as A had only a twelve-annas share of the property in his possession, B's security was of necessity reduced to that amount, but on A's

* Appeal from Original Order, No. 265 of 1878, against the order of Baboo Matadin, Roy Bahadur, Subordinate Judge of Gya, dated 27th July 1878.

1879

DEOLIE
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SINGH.

again becoming the owner of the whole fourteen-annas, B had an equitable right to demand that the fourteen-annas should be held subject to his mortgage.

On the 22nd February 1872, Deolie Chand and others obtained a decree on a bond, dated the 24th October 1863, under which (with other properties) a fourteen-annas share of a certain mouza was mortgaged as security for an advance. Subsequent to the decree, the judgment-creditors bought from the judgment-debtor a two-annas share in the same mouza. At the time of this purchase there was a suit pending, in which eventually one Ajoodhya Pershad obtained a decree declaring him the proprietor of a two-annas share in the same mouza—so that at that time Ajoodhya Pershad held a two-annas share in the mouza, the decree-holders held a two-annas share, and the judgment-debtor held a twelve-annas share, of the property mortgaged. On the 20th June 1865, the decree-holders resold the two-annas share to their judgment-debtors, so that the judgment-debtors again became the proprietors of a fourteen-annas share in the mouza in question. The decree-holders of the 22nd February 1872 at this time had obtained a second decree against the same judgment-debtor, in execution of which a twelve-annas share of the mouza was brought to sale and was purchased by them.

The decree-holders, in satisfaction of their decree of 1872, applied for execution seeking to sell the remaining two-annas in possession of their judgment-debtors purchased on the 20th June 1865, claiming it as a portion of the property mortgaged to them.

The judgment-debtors objected, contending that the two-annas share in question was altogether distinct from the fourteen-annas share mortgaged on the 24th October 1863, and that, therefore, they were entitled to hold it free from any mortgage.

The Subordinate Judge held that the mortgage, in consequence of which the present sale had been advertised and objected to, was of prior date to the decree in execution of which a twelve-annas share out of the property mortgaged had been caused to be sold and purchased by the decree-holders; and that, therefore, the decree-holders were not entitled to claim the property (on which there existed a prior lien) on the strength of a pur-

chase of the mortgaged property made at an auction-sale, and were not entitled to sell the two-annas share obtained by the judgment-debtors after the execution of the mortgage-bond. He, therefore, ordered that the two-annas share, which was not contained in the mortgaged property, be exempted from sale, but that the costs of the judgment-debtor should be borne by him.

1879
DROUIN
CHAND
&
NIRBAN
SINGH.

The decree-holders appealed to the High Court.

Baboo *Kally Mohun Das* and Baboo *Nil Madhub Sen* for the appellants.

Baboo *Lal Mohun Das* for the respondent.

The judgment of the Court so far as it is material for the purpose of the present report was delivered by

AINSLIE, J. (BROUGHTON, J., concurring):—There can be no doubt that at the date of the mortgage there was a two-annas share held by the decree-holder, which has subsequently passed to the judgment-debtors, and which obviously could not be subject to the mortgage at the date thereof. The contract of the judgment-debtor was to hold fourteen-annas subject to a mortgage for the repayment of the debt due to the appellant. So long as he had only a twelve-annas share in his possession the mortgage security was of necessity reduced to that amount; but if at any time he became owner of fourteen-annas the creditor had an equitable right to demand that that fourteen-annas should be held subject to his mortgage. This principle has been distinctly recognized in the Specific Relief Act, and it appears to us that there can be no doubt that the decree-holder is equitably entitled to have security as far as it is possible for the debtor to give it, up to the extent of the fourteen-annas for which he contracted.

We, therefore, think that the two-annas share, in respect of which there has been a dispute in the Court below, is properly saleable in execution of the appellant's decree, if on taking an account of that which has been realized it is found that there is an outstanding debt.

The appeal must, therefore, be allowed with costs.

Appeal allowed.