

consenting persons be made defendants in the cause if the plaintiff applies that they be made defendants, and the case be proceeded with. Costs to abide the result.

1885

BECHU LAL

v.

OLIULLAH.

Appeal allowed and case remanded.

Before Mr. Justice Pigot and Mr. Justice O'Kinealy.

RAMESWAR NATH SINGH (ONE OF THE DEFENDANTS) v. MEWAR
JUGJEET SINGH AND ANOTHER (PLAINTIFFS).*

1885

February 26.

Mortgagor and mortgagee—Execution of decree—Sale in execution—Foreclosure proceedings—Purchaser—Notice.

Where a person mortgages his property by deed of conditional sale, and afterwards the right, title and interest of the mortgagor is sold in execution of a money-decree previously obtained against him; the purchaser at such sale is entitled to due notice of foreclosure proceedings instituted subsequently to the sale, but before the confirmation thereof.

Bhyrub Chunder Bundopadhya v. Soudamini Dabee followed (1).

THIS was a suit for the possession of land which arose out of the following circumstances: The land originally belonged to the defendants, other than the defendant Rameswar Nath Singh. In August 1876 the last-named defendant obtained a money-decree against the other defendants, which decree was finally confirmed on special appeal to the High Court in June 1878. On the 11th of July 1877 the defendants, judgment-debtors, executed a *bye-bil-wufa* of the land now in suit in favour of Surabjit Singh, the father of the present plaintiffs, which was presented for registration on the 16th of July 1877, and finally registered on the 22nd of August 1877. On the 26th of July 1877, Rameswar Singh applied for execution of his decree by attachment of the same property. On the 5th of August 1877 the property was attached, and was afterwards sold in execution to Rameswar Nath Singh on the 16th of September 1878. This sale was confirmed on the 25th of January 1879, but no sale

* Appeal from Appellate Decree No. 997 of 1884, against the decree of H. L. Oliphant, Esq., Judicial Commissioner of Chota Nagpore, dated the 13th of March 1884; affirming the decree of Major Samuells, Assistant Commissioner and Subordinate Judge of Hazaribagh, dated the 13th of July 1881.

1885 certificate was issued until the 3rd of October 1879. In the meantime the plaintiff's father, the mortgagee under the deed of the 11th July 1877, instituted foreclosure proceedings on his mortgage under Regulation XVII of 1806 on the 2nd of November 1878, and under these proceedings the foreclosure became absolute on the 2nd of November 1879. On the 10th of May 1880 the plaintiffs, the heirs of Surabjit Singh who was then dead, instituted the present suit for possession.

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 RAMESWAR
 NATH SINGH
 v.
 RAMESWAR
 JUGJEET
 SINGH.

The sole question arising on this appeal was, whether Rameswar Nath Singh was entitled to notice of the foreclosure proceedings instituted on the 2nd of November 1878. This point was found against him by the lower Courts on the authority of *Basapa v. Marya* (2); *Sheo Golam Singh v. Ram Roop Singh* (3); and *Beepin Beharee Biswas v. Judoonath Hazrah* (4). The defendant, Rameswar Nath Singh, alone appealed to the High Court.

Mr. Gregory and Baboo Aulchil Chunder Sen for the appellant.

No one appeared for the respondents.

The judgment of the Court was delivered by

FIGOT, J.—The foreclosure proceedings in this case were instituted on the 2nd November 1878. The sale took place on the 16th September 1878. The sale was not confirmed until January 1879, nor was the sale certificate issued until the 3rd October following. But on the authority of the Full Bench decision of this Court of *Bhyrub Chunder Bundopadhya v. Soudamaini Dabee* (5), it must be taken that the decree-holder became purchaser at the time of the sale, and not at the time of its confirmation or on issue of the certificate. Under these circumstances, he was entitled at the time of the institution of the foreclosure proceedings to due notice. No such notice having been given, no right to bring this suit against the defendant has accrued to the plaintiff under the foreclosure proceedings.

The appeal must, therefore, be allowed, and the suit dismissed with costs.

Appeal dismissed.

(2) I. L. R., 3 Bom., 433. (3) 23 W. R., 25. (4) 21 W. R., 367.
 (5) I. L. R., 2 Calc., 141.