

APPELLATE CIVIL.

Before Sir Johu Wallis, Kt., Chief Justice, and Mr. Justice
Ramosam.

ASKARAM SOWKAR (DECREE-HOLDER), APPELLANT,

1920,
November
25.

v.

VENKATASWAMI NAIDU AND TWO OTHERS
(JUDGMENT-DEBTORS), RESPONDENTS.*

Limitation Act (IX of 1908), section 20—Mortgage decree against mortgagor and purchaser of the equity of redemption—Payment of interest as such by the purchaser, effect of.

A purchaser of the equity of redemption is a person liable to pay the mortgage debt within section 20 of the Limitation Act; hence, if under a mortgage decree for sale of the mortgage property, to which he is a party, though exempted from personal liability, he pays interest as such, such payment gives a fresh period of limitation for execution of the decree.

Bolding v. Lane, (1863) 1 De. G.J. and Sm., 122 and *Chinnery v. Evans*, (1864) 11 H. L. Cas., 115 at 125, followed.

APPEAL against the order of C. V. VISVANATHA SASTRI, City Civil Judge in the Madras City Civil Court, in Execution Petition No. 110 of 1920, in Original Suit No. 114 of 1916.

The suit was on a mortgage bond executed in August 1914 for the recovery of Rs. 176. Defendants Nos. 1 and 2 were the mortgagors, and the purchaser in Court auction of the equity of redemption was impleaded as the third defendant. A mortgage decree for sale as contemplated by O. XXXIV, rule 5, of the Civil Procedure Code, was passed in April 1916 for Rs. 176 with subsequent interest and costs. The decree which gave three months' time for redemption absolved the purchaser from all personal liability and reserved liberty to the mortgagee to apply against the mortgagors for any balance that might remain unpaid after the sale of the mortgaged property. The final decree in the suit was passed on 7th February 1917. The third defendant privately paid to the decree-holder Rs. 28-13-0 in August 1918, which covered the costs, Rs. 23-12-0, mentioned in the

* City Civil Court Appeal No. 18 of 1920.

decree and interest for three months from the date of the preliminary decree on Rs. 144, the unpaid balance of the mortgage amount. On 30th March 1920 the decree-holder filed this application against all the three defendants for sale of the mortgaged property. Defendants Nos. 1 and 2 were *ex-parte* and on objection by the third defendant, the City Civil Judge dismissed the application holding that it was not proved that any money was paid by the third defendant for interest as such and that even if such payment was made it would not save limitation as against the other defendants. The decree-holder preferred this Appeal.

ASKARAM
SOWKAR
v.
VENKATA-
SWAMI
NAIDU.

V. C. Seshachariar, Md. Ibrahim Sahib and G. Ramakrishna Ayyar for appellant.

C. Venkatasubburamiah and S. Alasingarachari for respondents.

The Court delivered the following JUDGMENT:—

This is an Appeal from the Order of the City Civil Court Judge dismissing an application by the decree-holder for execution against the original mortgagors, defendants Nos. 1 and 2 and the third defendant who is the auction purchaser of the interest of the mortgagors. The appeal is only pressed as regards the application against the third defendant, the auction-purchaser. He undoubtedly made a payment of Rs. 28-18-0 on 28th August 1918 for which he obtained a receipt and of this sum Rs. 23-12-0 was due for costs. In order to save limitation this payment must have been made for interest as such but the learned Judge has found that it was not made for interest. No other explanation is given as to why the additional Rs. 5-1-0 was paid and that sum amounts to very nearly three months' interest, which was the amount of interest due up to the time fixed for payment by the decree, and we think that in the circumstances the natural and proper inference is that the payment was made for interest as such. If that be so, we have a payment by the auction-purchaser for interest as such. Now, according to the decisions, he is a person liable to pay within the meaning of section 20 of the Limitation Act, and this has been decided in England with reference to the identical language of the English Statute. It was decided

ABKARAN
SOWKAR
v.
VENKATA-
SWAMI
NAIDU.

in *Bolding v. Lane*(1), and this proposition was affirmed and explained by Lord WESTBURY in *Chinnery v. Evans*(2). It was held in that case that the second mortgagee was the person liable to pay the first mortgagee on the ground that he could only get the property by redeeming the first mortgagee and Lord WESTBURY says:

“What was decided in *Bolding v. Lane*(1) was this: that the words ‘the person by whom the same is payable, or his agent’” which are practically identical with the words of our section:

“were words of such large import and meaning that they would not only comprehend the mortgagor and his personal representatives, upon whom the contract would be personally binding, but would also include the second or the third mortgagee, by whom the principal and interest due to the first mortgagee might, with propriety, be said to be payable, inasmuch as the estate and right of the second mortgagee was subject and posterior to that of the first mortgagee, and he would be entitled to redeem the first mortgagee upon the payment of the principal and interest.”

Now, these words of Lord WESTBURY exactly apply just as much to the case of the auction-purchaser of the mortgagor's interest. We thought it better to go to the fountain head of authority upon which this proposition rests though no doubt there may be abundant later cases upon which the decision might be rested.

For these reasons the Appeal must be allowed and the order set aside and execution directed with costs here and below.

N.B.

(1) (1863) 1 De. G. J. and Sm., 122: (2) (1864) 11 H.L. Cas., 115 at 135.