

in the property? If so, was notice of foreclosure served on him? The lower appellate Court will return its finding on these issues, when ten days will be allowed for objections.

1877

DREGAR
SINGH
v.
DEBI SINGH.

The Subordinate Judge determined on these issues that at the time the foreclosure proceedings commenced Debi Singh was in possession of the shares as mortgagee, and was still in possession as such, and that no notice of foreclosure was served on him.

On the return of these findings, the High Court delivered the following

JUDGMENT.—The facts found by the Court below are no longer disputed, and we accept the findings. We entirely concur in the more recent rulings (1) that the term mortgagor's "legal representative" used in the Regulation (XVII of 1806) was intended to apply to all or any persons who at the date of the notice possess a title to the equity of redemption whether absolute or defeasible under the mortgage. The respondents were as mortgagees entitled to notice, and the foreclosure proceedings as against them are invalid. They were entitled to have the opportunity of coming in to redeem the mortgage held by the appellants so as to preserve their own security, and the issue of notice to them was indispensable to bar them by foreclosure. The appeal is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

November 14,
1877

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Turner.

AJNASI KUAR (JUDGMENT-DEBTOR) v. SURAJ PRASAD (DECREE-HOLDER).*

Decree for the Performance of a Particular Act—Execution of Decree—Act VIII of 1859 (Civil Procedure Code), s. 200.

A, who had been directed by a decree to refrain from preventing her daughter returning to her husband, after the date of the decree permitted her daughter, who was of age, to reside in her house. *Held* that such conduct on the part of A was no such evidence of interference with her daughter's return as would justify the execution of the decree against her, under the provisions of s. 200 of Act VIII of 1859.

* Miscellaneous Special Appeal, No. 46 of 1877, from an order of M. Brodhurst, Esq., Judge of Benares, dated the 8th June, 1877, affirming an order of Babu Promoda Charn Banarji, Munsif of Benares, dated the 17th May, 1877.

(1) See 3 W. R. 230, *per* Phear, J., so 6 W. R. 230.

1877

AJNASI KUAR
 v.
 SURAJ
 PRASAD.

THE decree-holder in this case applied for the execution of a decree of the Munsif dated the 25th May, 1874, which he had obtained against his wife Deo Kuar for restitution of conjugal rights and against his wife's mother, Ajnasi Kuar, directing her to refrain from preventing his wife returning to him. He prayed in his application for execution that his wife should be sent back to him from the house of Ajnasi Kuar, and in the event of this not being done that certain property belonging to the judgment-debtors should be attached, and that the judgment-debtors should be arrested and imprisoned under s. 200 of Act VIII of 1859.

Ajnasi Kuar objected to the execution of the decree against her, stating that it was her wish that Deo Kuar should live with her husband, but that Deo Kuar was desirous of living in some house near her house, and that her servants should attend on her (Deo Kuar) in order that she might not be harshly treated by her husband, and that if the decree-holder would consent to this arrangement she (Ajnasi Kuar) would give him and his wife food and clothing and provide servants for them, or the matter might be submitted to arbitration.

The Munsif directed execution to issue, observing with reference to Ajnasi Kuar that she did not give her unqualified assent to her daughter living with her husband, and therefore it could not be held that she had not opposed her daughter's return to her husband. On appeal by Ajnasi Kuar to the Judge the order of the Munsif was affirmed.

Ajnasi Kuar appealed to the High Court contending that she did not prevent Deo Kuar, who was of age, returning to her husband, and that it was not shown that she in any way obstructed the satisfaction of the decree.

Mr. *Mahmood* and *Munshi Hanuman Prasad*, for the appellant.

Mr. *Colvin*, for the respondent.

The judgment of the High Court was delivered by

TURNER, J.—There is no evidence that there has been any interference on the part of the appellant with the return of her daughter to the respondent since the date of the decree. Something

more must we think be shown than that the daughter who is of age is still permitted to reside in the appellant's house. We must therefore allow the appeal and order the release from attachment of the appellant's property. No costs will be allowed to either party to this appeal either in the Court below or in this Court.

1877

AJNASI KUAF
v.
SURAJ
PRASAD.

Appeal allowed.

APPELLATE CIVIL.

1877

November 19.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

PRAG DAS (PLAINTIFF) v. HARI KISHN AND ANOTHER (DEFENDANTS).*

Hindu Law—Hindu Widow—Forfeiture—Reversioner.

A Hindu widow does not forfeit her interest in her deceased husband's separate estate merely by divesting herself of such interest. Such an act does not entitle the person claiming to be the next reversioner to sue for possession of the estate, or for a declaration of his right as such reversioner to succeed to the estate after the widow's death.

THIS was a suit for possession of a moiety of the separate estate of one Lalji, deceased, brought by one of the two next reversioners, against the widow of Lalji and the other reversioner. The facts of the case are sufficiently stated in the judgment of the High Court to which the plaintiff appealed against the decree of the Court of first instance dismissing his suit.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji) and Munshi Hanuman Prasad, for the appellant.

Pandit Ajudhia Nath and Munshi Sukh Ram, for the respondents.

The judgment of the High Court was delivered by

OLDFIELD, J.—Ram Din, who died in 1872, left three sons surviving him, Lalji, Prag Das, and Hari Kishn. The first died in September, 1874, leaving a childless widow, Gopal Dai. The subject of this suit is the property left by Lalji. The plaintiff, Prag Das, sues his surviving brother Hari Kishn and Gopal Dai, the widow, to establish his right and to recover possession of half Lalji's property, on the averment that the three brothers held separate

* Regular Appeal, No. 48 of 1877, from a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Mirzapur, dated the 8th December, 1876.