

The appellant's pleaders in this Court at once recognised the position in which their client was placed, and have preferred a petition praying that the other partners may now be made parties. Although in some instances parties have been added by this Court in the stage of appeal, yet, seeing that the appellant elected to go to trial and the case was decided in the Court below without amendment of the proceedings, we are of opinion that in this instance we ought to refuse the application and allow the objection.

We shall therefore dismiss the appeal, affirming the decree of the Court below, not on the grounds on which that decree was passed, but on the preliminary ground that all the necessary parties were not joined as plaintiffs, and that the appellant has shown no sole cause of action. The appellant and his partners may of course bring a fresh suit.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Turner and Mr. Justice Spankie.

HIRA CHAND (DEFENDANT) v. ABDAL (PLAINTIFF).^{*}

Redemption of Mortgage—Suit for Contribution—Misjoinder.

The purchaser of a share in a mortgaged estate, who has paid off the whole mortgage-debt, in order to save the estate from foreclosure, can claim from each of the other mortgagors a contribution proportionate to his interest in the property, but he cannot claim from the other mortgagors collectively the whole amount paid by him (1).

THE plaintiff in this suit purchased at auction-sale the rights and interests in a certain village of one Rameshar Chand. He subsequently discovered that those rights and interests had been mortgaged jointly with those of Hira Chand and another person. To save a foreclosure of the mortgage the plaintiff was compelled to discharge the mortgage-debt. He sued to recover the amount

* Special Appeal, No. 618 of 1877, from a decree of Maulvi Sultan Hasan, Subordinate Judge of Gorakhpur, dated the 6th March, 1877, affirming a decree of Maulvi Habib Rahim, Munsif of Bansaon, dated the 22nd December, 1876.

(1) In *Rujapat Rai v. Ali Khan*, H. C. R., N.-W. P., 1873, p. 215, where a person, who had been compelled to satisfy a decree obtained against him and other persons jointly, sued such other persons for contribution, seeking a joint decree against them for the money he had paid

after deducting his own share, the High Court, instead of dismissing his suit, remanded the case that the Court below might determine and separately decree the respective shares of the other persons.

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of this debt from the mortgagors. The Court of first instance gave him a decree against all the defendants for the sum claimed, which decree was affirmed by the lower appellate Court on appeal by Hira Chand.

Hira Chand then appealed to the High Court, contending that the suit as brought was unmaintainable.

Lala Lalta Prasad, for the appellant.

Babu Jogindro Nath Chaudhri and Shah Asad Ali, for the respondent.

The judgment of the High Court was delivered by

TURNER, J.—The suit cannot be maintained as brought. The plaintiff, respondent, the purchaser of a mortgagor's share, paid off the mortgage to save the property from foreclosure. He thereby became entitled to call upon each of the other mortgagors to contribute, that is to say, he could claim from each a contribution proportionate to his interest in the property. He has now claimed in the lump sum the whole amount paid by him from the other co-sharers collectively, not even excluding his own quota.

The appeal is decreed, and as the ground is common to all the defendants, and it would be inequitable to allow the decree to stand against any of them, we reverse the decrees of the Courts below as against the defendants who did not appeal as well as against the defendant who has appealed. Hira Chand will recover his costs in all Courts. The other defendants must pay their own costs.

Appeal allowed.

FULL BENCH.

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

UDAI SINGH (JUDGMENT-DEBTOR) v. BHARAT SINGH AND OTHERS (DECREE-HOLDERS).*

Rival Decrees—Decree of Her Majesty in Council—Decree of the High Court—Execution of Decree.

On appeal by U, the High Court set aside a decree which the sons of K had obtained in the Court of first instance against U and certain other persons,

* Miscellaneous Regular Appeal, No. 50 of 1876, from an order of Babu Kashi Nath Biswas, Subordinate Judge of Meerut, dated the 31st July, 1876.