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natural consequences of their acts, namely, that the ultimate position of the girls would be that of mere mistresses. Even if this be so, which I very much doubt, it cannot be said, that that is an "unlawful and immoral purpose." It may be immoral, but it is impossible to say it is unlawful. The mischief aimed at by these sections was traffic in female minors for purposes of "prostitution," that is, in its perfectly well-understood sense, "or for any unlawful and immoral purpose" of a like description. But here a form of marriage, no matter what its precise character was, was gone through, and though the men who took part in it have been punished by being put out of caste for disregarding the rules and regulations of their community, it does not appear to me, that the girls should, for the purposes of the law, be regarded as any the less the wives of those excommunicated persons.

Entertaining the views I do, I am of opinion that the convictions under ss. 372 and 373, Penal Code, must be set aside.

APPELLATE CIVIL,

Before Mr. Justice Spankie and Mr. Justice Straight.

JANKI DAS (DEFENDANT) v. BADRI NATH (PLAINTIFF).*

Suit for money charged on Immoveable Property—Jurisdiction—Mortgage—First and second mortgages—Sales in execution of decrees enforcing mortgages—Auction-purchasers.

Held that a suit for money charged on immoveable property in which the money did not exceed Rs. 1,000, although the value of the immoveable property did exceed that sum, was cognizable by a Munsif, such property being situate within the local limits of his jurisdiction.

Certain immoveable property was sold on the same day in the execution of two decrees, one of which enforced a charge upon such property created in 1864 and the other a charge created in 1867. *Held* that the purchaser of such property at the sale in the execution of the decree, which enforced the earlier charge, was entitled to the possession of such property in preference to the purchaser of it at the sale in the execution of the decree which enforced the later charge, notwithstanding the latter had obtained possession of the property in virtue of his purchase. *Ajoodhya Pershad v. Moracha Koor* (1) distinguished.

* Second Appeal, No. 785 of 1879, from a decree of H. Lushington Esq., Judge of Allahabad, dated the 6th May, 1879, reversing a decree of G. E. Knox, Esq., Subordinate Judge, dated the 24th December, 1872.

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On the 14th November, 1864, one Chotay Lal executed a bond in favour of Muni Bibi in which he promised to pay her Rs. 500 with interest at two per cent. per mensem within two years, and in which he hypothecated his proprietary interests in a certain house, situate at Allahabad, as collateral security for such payment. On the 24th June, 1867, Chotay Lal executed a bond in favour of Janki Das, the defendant in this suit, in which he promised to pay him Rs. 1,800 with interest at one per cent. per mensem within seven years, and in which he hypothecated a moiety of the same house as collateral security for such payment. Muni Bibi sued Chotay Lal on her bond, in the Court of the Munsif of Allahabad, for Rs. 720, and obtained a decree on the 9th March, 1872, giving her a lien on the hypothecated property for that amount. Janki Das subsequently sued Chotay Lal on his bond in the Court of the Subordinate Judge of Allahabad, and obtained a decree on the 1st August, 1874, giving him a lien on the hypothecated property for the amount of the decree. On the 10th December, 1877, a moiety of the house, being the interest of Chotay Lal therein, was put up for sale in the execution of Muni Bibi's decree under the order of the Munsif, and was purchased by the plaintiff in this suit, Badri Nath. On the same day the same property was put up for sale in the execution of Janki Das' decree under the order of the Subordinate Judge and was purchased by Janki Das, who obtained possession of the property in virtue of his purchase. Badri Nath, on endeavouring to obtain possession of the property in virtue of his purchase, was resisted by Janki Das. On his complaint the Munsif inquired into the matter of the resistance and made an order against him. He accordingly brought the present suit against Janki Das to establish his right to the possession of a moiety of the house. The defendant stated in his defence to the suit as follows:—“Chotay Lal, the judgment-debtor and original owner of the house in dispute, was indebted to several creditors: to defraud those creditors of their just dues and to secure his house from attachment, he executed, without consideration or any money paid, under false language and with dishonest intent, a bond in favour of Muni Bibi, his sister: this bond after execution and registration he kept in his own possession: as

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soon as the creditors came down upon him he borrowed from Ram Prasad, brother of the defendant, Rs. 1,000, through Munni Bibi, and executed a bond for the same : this bond bears date 24th June, 1867 : a short time before the date for paying this bond fell due, he got Munni Bibi to bring a case against him founded upon the bond in her favour and caused a decree to be passed against him on the 9th March, 1872 : Munni Bibi, her mother, and the judgment-debtor himself have told many persons that the bond in favour of Munni Bibi was written only to keep the property from attachment, and that no consideration ever passed for the same : as the bond upon which the decree was passed under which plaintiff eventually became a purchaser was one without consideration and collusive, it follows that rights resting upon the auction under such circumstances can bear no comparison with defendant's claim, which is a just one and free from all taint of collusion : further the plaintiff by another act of collusion caused the house to fetch at auction a much lower sum than it was really worth".

The issues fixed by the Subordinate Judge were (i), Which of the two decrees confers a prior right upon the purchaser, and (ii), Was the decree passed by the Munsif of Allahabad on the 9th March, 1872, one within the jurisdiction of that Court. The Subordinate Judge dismissed the plaintiff's claim for the reasons stated in the following extract from his judgment :—" In this case the rival applicants for possession of the same half of a house situate in the city of Allahabad are Badri Nath and Janki Das. They both base their claims upon a purchase at open auction held by two different Civil Courts on one and the same day. There is no evidence tendered to show whether there was any priority of time in the sale. It is, however, undisputed that Janki Das was the first to obtain possession and that he has been in possession ever since. Being a possessor with a title it is incumbent upon the plaintiff to show that he has a better title under which to demand the re-conveyance of the property from defendant to himself. The position in which defendant stands is briefly this. There has been a public avowal of a sale between the Civil Court as agent for the judgment-debtor and the defendant as vendee. The transfer was at once

complete. It was perfected by possession, and the defendant can now only be compelled to re-convey to a prior vendee. If the plaintiff could show such priority he ought to have done so. Instead of this he has confined himself to showing that the decree under which he purchased proceeds from a bond of an earlier date than the bond which led to the execution and sale under which defendant purchased. There might have been some object in this had he been striving to establish a charge upon the property in dispute. The bond was not in his favour, but in favour of Munnî Bibi, and even to her it gave only a lien upon the house hypothecated therein. The document, which stands upon the file as exhibit A, shows that the mortgage in favour of the lady was a simple mortgage in which the borrower bound himself personally for the repayment of the loan with interest, and pledged his land as a collateral security for such repayment. Under such a mortgage, as Mr. Macpherson (1) shows, the mortgagee, having obtained a decree, proceeds in execution to sell the land and out of the proceeds of the sale to satisfy his claim.

“Munnî Bibi’s right was nothing more than a right to certain money with interest. She never had possession of the land, nor could she ever obtain possession unless she proceeded at the sale to become the vendee. Nor was her position altered by the decree which was correctly given in the first instance against the person of the mortgagor. We come lastly to the sale, and here for the first time we have a starting of possession in favour of plaintiff against the vendor. It has, however, been already shown that, for all that has ever been shown to the Court, the plaintiff’s and defendant’s starting point were one and the same; any how, the defendant being in possession, plaintiff must show his priority. The burden being upon him and not having been discharged, the Court finds the first issue against him.

“As regards the second issue, it is unnecessary here to enter into the grounds upon which the Court holds it has cognizance. The plaintiff maintains the Court has cognizance and the Court agrees with him on the point. Having, however, found against

(1) Macpherson on Mortgages, 2d Ed. p. 13.

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him on the first issue there is no need to pursue this issue further."

On appeal by the plaintiff the lower appellate Court held that he was entitled to the possession of the property in suit, having purchased it at a sale effected to discharge a lien created prior to the lien in discharge of which the sale at which the defendant had purchased was effected.

The defendant appealed to the High Court.

Mr. Colvin, for the appellant.

Babus *Oprokash Chander Mukarji* and *Ram Das Chakarpati*, and *Munshi Ram Prasad*, for the respondent.

The judgment of the High Court (SPANKIE, J. and STRAIGHT, J.) was delivered by

SPANKIE, J.—In dealing with the pleas in appeal it is necessary to see what was the defence set up. It was briefly as follows; that Chetay Lal the judgment-debtor and original owner of the house in dispute was indebted to several creditors, and, to defraud them and secure his house from attachment, he dishonestly executed a bond hypothecating the house to Munni Bibi, his sister, without any consideration, the transaction being altogether fraudulent. He retained possession of the bond, but, when pressed by his creditors, he borrowed from Ram Prasad, the brother of defendant, Rs. 1,000, through Munni Bibi, and executed a bond for that sum. The bond is dated 24th June, 1867. Before the bond fell due the judgment-debtor caused Munni Bibi to bring a suit against him founded upon the bond which he had given her, and on the 9th March, 1872, a decree was given against him.

Now the plaintiff's case is that the bond under which the decree was executed and sale in his favour was had is dated 14th November, 1864. Both plaintiff and defendant are auction-purchasers upon the same day in execution of decrees. The decrees are of two different Courts. The plaintiff purchased in execution of the decree of the Munsif upon the bond dated 14th November, 1864, and the defendant purchased in execution of the decree of the

Subordinate Judge upon the bond executed on the 24th June, 1867. In both bonds there was an hypothecation of the house as security for the payment of the debt.

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The Subordinate Judge on the 28th November, 1878, laid down the following issue, "Which of the two decrees confers a prior right upon the purchaser." On the 18th December he added this issue, "Was the decree passed by the Munsif of Allahabad on the 9th March, 1872, one within the jurisdiction of that Court." The second issue was added because in the first instance the property was valued at Rs. 1,200 by the Munsif, and the plaint was returned by him on the ground that the claim was beyond his jurisdiction. The Subordinate Judge found that there was no evidence to show that there was any priority in the time in favour of one auction purchaser over the other. But Janki Das, defendant, obtained possession first, under his sale, and, therefore, as Janki Das was a purchaser with title, the plaintiff was bound to show a better title, if he desired to secure the property for himself. In coming to a conclusion upon this point the Subordinate Judge appears to have made a mistake in assuming that in the decree of the 9th March, 1872, there had been no decree against the property hypothecated as security in the bond dated the 14th November, 1864. He seems to hold that the plaintiff failed to prove any priority of lien, and, as defendant had obtained possession in execution as auction-purchaser, his possession could not be disturbed. The Subordinate Judge did not think it necessary to express his reason for holding that the Munsif of Allahabad had jurisdiction in the suit in which he made the decree of the 9th March, 1872, at the same time he held that there had been jurisdiction. The first Court then dismissed the suit on the ground that plaintiff had established no title as against defendant. In appeal the Judge reversed the decision of the Subordinate Judge, and decreed the claim in favour of plaintiff. The lower appellate Court held that the decrees were not money decrees, but both had been made in suits to recover money by enforcing the security hypothecated in the bonds upon which the claims were based, and that priority would be found according to the dates of the respective bonds. The plaintiff as auction-purchaser in execution of a decree against person and property hypo-

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the defendant, inasmuch as he purchased in execution of a decree upon a bond of prior date to that which was the foundation of the claim that led to a decree in execution of which defendant purchased. The earlier possession of defendant under the auction-sale was simply an accident arising out of the simultaneous sales in two different Courts. I notice a case in the Presidency Court, *Ajoodhya Pershad v. Moracha Kooer* (1), where the claims of both the parties were on bonds specially registered under ss. 52, 53, Act XX of 1866, so that neither decree could have legally imposed any lien on the property. The estate was sold by auction on two occasions in satisfaction of two distinct bonds, and the person who had proceeded on the later-dated of the two bonds, but who represented the earlier auction-purchaser, had actually taken possession of the estate. It was held that, though in a properly brought suit between the parties to declare the property liable for the amount of the first mortgage, the party in possession would have to pay to secure his possession, yet he could not be ousted by the opposite party. This case differs from the present one in so much that the decrees in the precedent cited must be regarded as money-decrees, whereas in the present case both decrees charged the property. Moreover in that case the sales were not simultaneous, but one occurred on 25th January, 1869, and the other on the 9th March, 1869. Here it appears to me that I ought to consider what would have been the effect, if by accident or otherwise there had been two simultaneous sales in execution of two decrees charging property by order of the same Court. In such a case effect would doubtless have been given to the auction-purchase under the decree upon the older lien, and, under the circumstances of the case, it appears to me that the plaintiff is entitled to claim possession of the property, and that the sale in favour of defendant should be considered of no effect as against that in favour of plaintiff, and his possession should be regarded as not having been acquired under any good title. Here again I should say once more that the claim was not resisted by the defendant on the ground of his title being superior to that of the plaintiff under the sale, but mainly, if not altogether, on the

ground that the decree under which the plaintiff purchased was a decree obtained in a fraudulent transaction and therefore should have no force. On this point, if it be allowed that we could go behind a decree which has not been set aside, it is sufficient to say that the Judge has found that the defendant declined to give any evidence in support of the plea of fraud. As he asserted the fraud he was bound to prove it, as he did not even attempt to do so, there is an end of the plea. I would dismiss the appeal and affirm the judgment with costs.

Appeal dismissed.

Before Mr. Justice Spankie and Mr. Justice Straight.

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SAWAI RAM (PLAINTIFF) v. GIR PRASAD SINGH (DEFENDANT).*

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Wrongful dispossession of land—Compensation for wrongful dispossession—Jurisdiction—Act XVIII of 1873 (N. W. P. Rent Act), s. 95, clauses (m) and (n).

In an estate held by S as a sub-proprietor he held certain land with a right of occupancy. G, the zamindar, obtained a decree against S in a Civil Court for the possession of the estate, in execution of which he ousted S from the estate including the land held by him with a right of occupancy. This decree having been set aside, S recovered the possession of the estate including such land, and sued G in the Civil Court for the value of the crops standing on such land at the time he was ousted from it by G, and for the rents of a portion of such land which G had let to tenants while in possession of it. *Held* that the suit was cognizable by the Civil Courts (1) and that G was liable for such rents.

In the year 1874 the plaintiff in this suit was in the possession of a certain estate paying revenue to Government, situate in the Aligarh district, of which the defendant was the proprietor. At the settlement of this estate in that year a dispute arose between the plaintiff and the defendant as to the nature of the former's possession. On the 21st December, 1874, the Settlement Officer made an order which declared that the plaintiff was the lessee of the estate for an indefinite term, and that he was also an occupancy-tenant of fifty-one bighas, ten biswas, of land comprised in the estate. The defendant subsequently instituted a suit against the plaintiff in the Court of the Subordinate Judge of Aligarh, for his ejection

* Second Appeal, No. 991 of 1879 from a decree of C. W. Moore, Esq., Judge of Aligarh, dated the 28th July, 1879, modifying a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 29th March, 1879.

(1) See also *Kalian Das v. Tika Ram*, I. L. R., 2 All. 137.