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facts, hold that Sukh Din, Thakur Prasad, Husain Ali, and Sheo Charan, were not innocent purchasers without notice; that if they were not aware of the interest which they respectively purchased as we believe they must have been, they respectively took no reasonable care to ascertain what their respective vendors' titles were, and that if they assumed to purchase more than a mortgagee's interest they did not act in good faith. As by Regulation XVII of 1806 mortgagors in such a case as the present were entitled to redeem within sixty years, we hold that the respondents were entitled to redeem. We dismiss this appeal with costs, and as the respondents have not appealed from the judgment or order below, the respondents have the opportunity of redeeming on the terms decreed.

Appeal dismissed.

FULL BENCH.

1886
November 17.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

MUHAMMAD SULEMAN KHAN AND OTHERS (APPLICANTS) *v.* FATIMA (OPPOSITE PARTY).*

Stat. 24 and 25 Vic., c. 104, s. 15—Revision of judicial proceedings—Jurisdiction of High Court—Civil Procedure Code, s. 622.

Held by EDGE, C. J., and OLDFIELD and BRODHURST, JJ., that under s. 15 of 24 and 25 Vic., c. 104, it is competent to the High Court, in the exercise of its power of superintendence, to direct a Subordinate Court to do its duty or to abstain from taking action in matters of which it has no cognizance; but the High Court is not competent, in the exercise of this authority, to interfere with and set right the orders of a Subordinate Court on the ground that the order of the Subordinate Court has proceeded on an error of law or an error of fact. The High Court's power to direct a Subordinate Judge to do his duty is not limited to cases in which such Judge declines to hear or determine a suit or application within his jurisdiction.

Held by STRAIGHT and TYRRELL, JJ., that the word "superintendence" used in s. 15 of the Charter Act contemplated and now includes powers of a judicial or *quasi*-judicial character, apart from those conferred on the Court by s. 622 of the Civil Procedure Code; but that the last mentioned provision may properly be accepted as indicating the extent to which the Court should ordinarily interfere with the findings of such subordinate tribunals as are invested with exclusive jurisdiction to try and determine all questions of law and fact arising in suits within their exclusive cognizance, and in which their decisions are declared by law to be final.

* Misc. Application No 242 of 1885.

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Tej Ram v. *Harsukh* (1), *Girdhari Singh* v. *Hurdeo Narain Singh* (2), and *In the matter of the petition of Mathra Parshad* (3) referred to. The judgment of PETHERAM C. J., in *Badami Kuar* v. *Dina Rai* (4) explained.

THIS was an application to the High Court for the exercise of its powers under s. 15, Stat. 24 and 25, Vic., c. 104. The applicants prayed for revision of an order of the Subordinate Judge of Aligarh, dated the 20th July, 1885, amending, under s. 206 of the Civil Procedure Code, a decree made on the 24th December, 1878. The grounds on which revision was sought were (i) that the application for amendment was barred by limitation; (ii) that s. 206 of the Civil Procedure Code was not applicable to the case, and the decree could not be amended; (iii) that the Subordinate Judge could not amend the decree of his predecessor; (iv) that the decree could not be amended at the stage at which it was amended; and (v) that there was no valid reason for amending the decree in the manner in which it had been amended.

The application came for hearing before Straight and Brodhurst, JJ., who referred to the Full Bench the following question:—

"Whether, having regard to the ruling of this Court, reported at p. 293, 1st Allahabad Series, Indian Law Reports (5), and to the terms of s. 15 of 24 and 25 Vic., c. 104, there resides in this Court a power of a judicial superintendence over the subordinate Courts, which enables it to entertain judicially applications for revision or interference with the orders of such subordinate Courts."

The Hon. Pandit *Ajudhia Nath* and Lala *Harkishan Das*, for the applicants.

Mr. *C. H. Hill* and Pandit *Sundar Lal*, for the opposite party.

EDGE, C. J.—I consider that under s. 15 of the Charter Act it is "competent to the High Court, in the exercise of its power of superintendence, to direct a subordinate Court to do its duty or not abstain from taking action in matters of which it has no cognizance but the High Court is not competent, in the exercise of such authority, to interfere with and set right the orders of a subordinate Court on the ground that the order of the subordinate Court is in

(1) I. L. R., 1 All., 101, at pp. 104-105.
(2) L. R., 3, Ind. Ap., 230.
(3) I. L. R., 1 All. 296.
(4) I. L. R., 8 All. 111.
(5) *In the matter of the p* *Math a Parshad.*

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has proceeded on an error of law or an error of fact."—*Tej Ram* v. *Harsukh* (1).

In saying that the High Court has this power to direct a subordinate Judge to do his duty, I do not limit the power to cases in which the subordinate Judge declines to hear or determine a suit or application within his jurisdiction. I prefer not to use the words "administrative authority" or "judicial powers" found in the Full Bench judgment in *Tej Ram* v. *Harsukh* (1), or "judicial superintendence" in the question before the Court, as without giving exhaustive definitions of the words, which I might fail to do, I might, by using them, lead to future difficulty. Each case must be considered as it arises. I do not consider that the decision of the Lords of the Privy Council in *Girdhari Singh* v. *Hardeo Narain Singh* (2) conflicts with the view above expressed.

Although the question as to the powers of the High Court under s. 622 of the Civil Procedure Code is not before us, the case of *Badami Kuar* v. *Dina Rai* (3) has been alluded to in argument, and in my opinion an erroneous construction has been put during the argument on the judgment of Sir Comer Petheram in that case. The late Chief Justice was dealing with the case before him, and although he used the words "questions of jurisdiction" in his judgment, he took pains in the last sentence of his judgment to explain his meaning; and it is obvious that he was not then considering the latter words of s. 622, "or to have acted in the exercise of its jurisdiction illegally or with material irregularity," which in fact did not apply to the case then under consideration. So far as can be seen from the report of the case of *Amir Hasan Khan* v. *Sheo Bakhsh Singh* (4), it was also one which did not involve the consideration of that portion of the section above quoted.

STRAIGHT, J.—Looking to the rulings of the Calcutta and Bombay Courts, and to *Girdhari Singh* v. *Hardeo Narain Singh* (2), I think that the word "superintendence" used in s. 15, Charter Act, contemplated and now includes powers of a judicial or *quasi*-judicial character, apart from those conferred on the Court by

(1) I. L. R., 1 All. 101, at pp. 104-105.
(2) I. L. R., 3 Ind. App., 220.
(3) I. L. R., 8 All. 111.
(4) I. L. R., 11 Calc., 6; L. R., 11 Ind. App., 237.

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s. 622 of the Civil Procedure Code. At the same time it appears to me that the last-mentioned provision may properly be accepted as indicating the extent to which the Court should ordinarily interfere with the findings of such subordinate tribunals as are invested with exclusive jurisdiction to try and determine all questions of law and fact arising in suits within their exclusive cognizance, and in which their decisions are declared by law to be final. These are the only terms in which I am able to answer this reference.

I desire to add that I am glad to hear the interpretation placed by the learned Chief Justice, and, as I understand it, approved by my brother Oldfield, on the remarks of the late Chief Justice in *Badami Kuar* v. *Dina Rai* (1). This construction goes far to meet the views I expressed in that case, in which my brother Tyrrell concurred, and to give effect to what I have always believed were the intentions of the Legislature as expressed in s. 622 of the Civil Procedure Code.

OLDFIELD, J.—I concur in the opinion expressed by the learned Chief Justice as his answer to this reference, so far as regards s. 15 of 24 and 25 Vic., c. 104. It appears to me substantially to express the opinion already given by the Full Bench in *Tej Ram* v. *Harsukh* (2). I have no objection to omitting from the ruling in that case the paragraph which refers to the High Court having "administrative" and not "judicial" powers under s. 15, because the use of words of this kind, which are not capable of very exact definition, is apt to lead to difficulties and doubts.

With reference to the observations of the learned Chief Justice upon the ruling of the Full Bench in *Badami Kuar* v. *Dina Rai* (1), as to s. 622 of the Civil Procedure Code, I was a party to that ruling, and in subscribing to the judgment of the late Chief Justice, I understood it not to exclude cases coming under the last portion, of s. 622, referring to the action of a Court "in the exercise of its jurisdiction illegally or with material irregularity."

BRODHURST, J.—I concur with the learned Chief Justice in his answer to the question which has been referred to us.

(1) I. L. R., 8 All. 111. (2) I. L. R., All. 101.

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TYRRELL, J.—I concur in the views expressed by my brother Straight and with the exception of the *dictum* in the Full Bench judgment in *In the matter of the petition of Mathra Parshad* (1), that "s. 15 of the Charter Act appears to confer administrative authority and not judicial powers," which may not be of the essence of that judgment, I think that judgment does not necessarily preclude an affirmative answer to the question referred to us, while the terms of the section are sufficiently large to justify such an answer.

1886
November 19.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

JIWAN ALI BEG (DEFENDANT) *v.* BASA MAL AND OTHERS (PLAINTIFFS.) *

Act III of 1877 (*Registration Act*), *s.* 17 (*b*) *and* (*c*)—*Mortgage-bond—Indorsements of part-payment Receipt—Registration.*

The strictest construction should be placed on the prohibitory and penal sections of the Registration Act, which impose serious disqualifications for non-observance of registration.

An instrument to come within s. 17 (*b*) of the Registration Act (III of 1877) must in itself purport or operate to create, declare, assign, limit, or extinguish some right, title, or interest of the value of Rs. 100 or upwards in immoveable property. To come within s. 17(*c*), it must be on the face of it an acknowledgment of the receipt or payment of some consideration on account of the creation, declaration, assignment, limitation, or extinguishment of such a right, title, or interest.

In a suit by a mortgagee for the sale of immoveable property mortgaged in certain simple mortgage bonds for amounts severally exceeding Rs. 100, the defendant pleaded that he had made certain payments in respect of the bonds, and in support of his plea relied on indorsements of payment upon them, one of which was as follows:—"Paid on the 21st December, Rs. 3,000." The other indorsements were in similar terms.

Held by the Full Bench (STRAIGHT, J., doubting) that the indorsements, even if assumed to be receipts, did not fall within s. 17 (*b*) of the Registration Act, inasmuch as a receipt, unless so framed and worded as to purport expressly to limit or extinguish an interest in immoveable property (which the indorsements did not), could not come within the section, and what ordinarily operated to limit or extinguish a mortgagee's interest in the mortgaged property was not the paper receipt, but the actual part-payment of the mortgage-debt.

Held also that the indorsements did not fall within s. 17 (*c*) of the Act, inasmuch as taken by themselves they were merely memoranda made by the

* First Appeal No 133 of 1885, from a decree of Maulvi Zainul-abdin, Subordinate Judge of Moradabad, dated the 16th April, 1885.

(1) I. L. R., 1 All. 296.