

F.C.  
1886  
July 18.

## PRIVY COUNCIL.

MASSUR ALI KHAN (PLAINTIFF) v. SARJU PRASAD (DEFENDANT.)

[On appeal from the High Court for the North-Western Provinces.]

*Regulation XVII of 1806, ss. 7, 8—Mortgage by conditional sale—Redemption.*

In the part of India where Bengal Regulation XVII of 1806 (1) is in force, the right to redeem a mortgage by conditional sale depends entirely upon it, whatever may be the true construction of the terms of the condition in regard to payment of interest.

Within a year after notification of a petition for foreclosure a mortgagor deposited the principal debt and interest for the last year of the mortgage term, which had expired. Interest for prior years of the term had not been paid; but this, according to the mortgagor's contention, was, by the terms of the condition, treated as a separate debt.

Held, that, as the mortgagor had not deposited the interest due on the sum lent required, according to s. 7 of the Regulation, where, as here, the mortgagee had not obtained possession, and as the year of grace had expired, the conditional sale had become conclusive under s. 8, involving the dismissal of the mortgagor's suit for redemption.

APPEAL from a decree (23rd January, 1883) of a Divisional Bench of the High Court, reversing a decree (9th April, 1881) of the Subordinate Judge of Gorakhpur.

This appeal raised a question of the right to redeem a mortgage by way of conditional sale, upon which the mortgagee had not been put into possession of the property mortgaged. The term of the mortgage having expired, application was made for foreclosure by the mortgagee, whereupon the mortgagor paid into Court, during the year of grace allowed by Regulation XVII of 1806, a sum equal to the principal debt and one year's interest. Interest for prior years had not been paid. Nevertheless, the mortgagor in the suit out of which this appeal arose claimed the right to redeem, insisting that the application for foreclosure was contrary to, and that his deposit was sufficient according to, the terms of the deed of conditional sale, which treated the other interest as recoverable by separate suit.

The respondent, Sarju Prasad, a banker in Gorakhpur, lent money to Zahir Ali Khan, since deceased, and now represented by

*Present:* LORD WATSON, LORD HOBHOUSE, SIR B. PEACOCK, and SIR R. COOPER.

(1) "For a general extension of the period fixed by Regulations I of 1728 and XXXIV of 1803 for the redemption of mortgages and conditional sales of land, under deed of bai-bik-wafa, katkaba, or other similar designation."

his brother, Mansur Ali Khan, the appellant. Zahir Ali Khan, to secure Rs. 11,200, executed on 14th March, 1868, a deed of conditional sale of villages in the district to Surju Prasad for the term of seven years. Default having been made in payment of the interest for three years, the mortgagee, in 1871, obtained a decree for it. This was satisfied in November of that year, and in the following year the mortgagee obtained a second decree for another year's interest, with interest thereon. On 23rd April, 1875, the period of the conditional sale having then expired, the mortgagee, under s. 8 of Regulation XVII of 1866, petitioned for foreclosure. In the following year Zahir Ali Khan died. In January, 1881, the appellant deposited in the District Court Rs. 12,881, a sum made up of the principal debt of Rs. 11,200 and interest for the last year of the term of the conditional sale, which, as he submitted, was all that, under the conditions of the contract, he was bound to deposit in order to redeem; and on the 21st of the same month, to establish his right so to do, he filed the present suit. The defendant, by his written statement, alleged that the plaintiff was bound to deposit, in addition to the above, the whole interest due, *viz.*, for the two preceding years of the mortgage term, and for the year in which the foreclosure was pending; contending that, as this had not been done, the foreclosure had become absolute and final.

The Court of first instance, the Subordinate Judge of Gorakhpur, held that the deposit made by the mortgagor was sufficient to satisfy the requirements of the condition contained in the instrument of mortgage, and gave a decree in favour of the plaintiff for redemption. The High Court, on appeal, held that the terms of the condition, on its true construction, were not satisfied by this deposit, and directed that the suit should be dismissed with costs in both Courts.

On this appeal, Mr. T. H. Cowie, Q. C., and Mr. R. V. Dwyne appeared for the appellant.

Mr. W. A. Raikes and Mr. Dunlop Hill, for the respondent.

For the appellant it was argued that, on the true construction of the terms of the condition in the instrument of 1868, the mortgagor, to entitle himself to redeem, needed only to deposit in Court the

1886

MANSUR ALI  
KHAN  
P.  
SURJU  
PRASAD.

1886

IAHSUR ALI  
KHAN  
v.  
SARJU  
PRASAD.

amount of the principal debt, together with the interest due for the last year of the specified term. Reference was made to the judgment in *Forbes v. Amereonissa Begum* (1), as fully stating the law applicable to cases falling under Regulation XVII of 1806. Here, however, it was contended that the special terms of the condition of the instrument determined the rights of the parties, and that the Regulation did not establish a right to redeem uncontrolled by the contract made between them.

Counsel for the respondent were not called upon.

Their Lordships' judgment was delivered by

SIR R. COUCH.—The suit which is the subject of this appeal was brought by the appellant for the redemption of a mortgage made by his deceased brother, Zahir Ali Khan, to whose estate the appellant had succeeded by inheritance. The mortgage was by a conditional sale to the respondent, dated the 14th of March, 1868, to secure the payment of Rs. 11,200, which had been borrowed by the mortgagor, and interest thereon, at the rate of Re. 1-4-0 per cent. per mensem, being Rs. 1,680. The condition was that the interest should be paid annually for seven years, with compound interest if it was not paid at the stipulated periods, to be realized from the person and property of the mortgagor, and the principal sum of Rs. 11,200 and Rs. 1,680 on account of interest for the last year was to be paid on 6th badi Chait (28th March, 1875). On the 23rd of April, 1875, after the expiration of the time fixed, the mortgagee filed a petition under the Bengal Regulation XVII of 1806, in which he claimed Rs. 17,304-7-0 as due for principal and interest, being the principal sum and three years' interest and compound interest thereon. A notification was thereupon issued by the Judge according to the Regulation, but the service of it was not effected till the 20th January, 1880. On the 17th of January, 1881, the mortgagor deposited in the Judge's Court Rs. 12,881, the principal sum and interest for the last year, with a petition alleging that the interest for the previous years was, according to the condition, to be recovered by a separate suit, and on the 20th of January, 1881, he brought this suit.

The lower Courts have given judgments at considerable length upon the construction of the mortgage-deed; the Subordinate Judge

(1). 10 Moo. I. A. 340.

holding that the appellant was entitled to redeem, and the High Court reversing that decision and dismissing the suit. It does not appear to their Lordships to be necessary to consider the construction of the deed. In the part of India where the Regulation is in force, the right to redeem depends entirely upon it. The words of s. 7 are, that where the mortgagee has not been put in possession of the mortgaged property (which was the case in this mortgage), the payment or established tender of the principal sum lent, with any interest due thereupon, shall entitle the mortgagor to the redemption of his property before the mortgage is finally foreclosed in the manner provided by the 8th section. That section gives the mortgagor one year from the date of the notification to redeem the property, and says that if he does not do so in the manner provided by the 7th section, the mortgage will be finally foreclosed and the conditional sale will become conclusive. It could not be denied by the appellant's counsel that much more than one year's interest was due. Indeed, the arrear of interest had continued to increase from the 23rd April, 1875, till the date of the deposit. The mortgagor had clearly not done what was necessary by the terms of the Regulation to entitle him to the redemption, and for that reason their Lordships will humbly advise Her Majesty to affirm the decree of the High Court and to dismiss the appeal. The appellant will pay the costs of it.

1886

MANSUR ALI  
KHAN  
v.  
SARFU  
PRASAD.

*Appeal dismissed.*

Solicitors for appellant : Messrs. T. L. Wilson and Co.

Solicitors for respondent : Messrs. Oehme and Summerhays.

## APPELLATE CIVIL.

*Before Mr. Justice Oldfield and Mr. Justice Tyrrell.*

CHUNNI LAL (DEFENDANT) v. BANASPAT SINGH (PLAINTIFF)\*

*Lease—Mortgage for securing payment of rent—Decree by Revenue Court for arrears of rent—Decree time-barred—Effect of decree on mortgage—Suit for sale of mortgaged property—Civil Procedure Code, s. 43.*

In 1874, the plaintiff leased certain immoveable property to the defendant, and the latter executed a deed by which he covenanted to pay the annual rent and

1886  
August 2.

\* Second Appeal No. 1156 of 1885, from a decree of F. E. Elliot, Esq., District Judge of Allahabad, dated the 1st June, 1885, reversing a decree of Abdu Ram Kali Chaudhri, Subordinate Judge of Allahabad, dated the 23rd January, 1884.