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ZALIM GIR
 v.
 RAM CHARAN
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and 10th October, 1872, and he therefore is also in my opinion entitled to pray those securities in his aid as prior incumbrances to that of the defendant-appellant, for the purpose of stopping him bringing the property to sale in execution of his decree, unless he recoups the plaintiff for the amount which he (the plaintiff) found to satisfy and discharge those incumbrances.

It is clear that the only right, supposing he gets those incumbrances out of the way by satisfying and discharging them, which the defendant-appellant has is upon the strength of the decree obtained in reference to his bond of the 27th January, 1874, to bring the property to sale, because he can have no right whatever under the instrument which was made in his favour on the 10th August, 1878. It therefore seems to me that the proper course for us to pursue in this case is, while allowing this appeal, to modify the decree of the Court below by declaring that the defendant shall only be permitted to bring the property to sale under his decree in respect of his mortgage of the 27th January, 1874, when he has satisfied and discharged the two mortgage-bonds held by the plaintiff-respondent of the 10th October, 1871, and the 10th October, 1872. The order of the learned Judge will stand as to the costs of the lower Courts. In this Court each party will pay his own costs.

TYRRELL, J.—I entirely concur.

Appeal allowed.

Before Mr. Justice Straight.

GOPAL DAS (DECREE-HOLDER) v. ALI MUHAMMAD AND OTHERS (JUDGMENT-DEBTORS).*

Mortgage—Decree for sale—Decree not to be treated as a money-decree—Act IV of 1882 (Transfer of Property Act), ss. 88, 89, 90.

A decree in favour of a mortgagee for sale of the mortgaged property cannot be treated as one for money. According to the Transfer of Property Act, ss. 88, 89 and 90, the mortgagee must first sell the mortgaged property, and if the net proceeds of such sale be insufficient to pay the amount due for the time being on the mortgage, and if the balance be legally recoverable from the mortgagor otherwise than out of the property sold, he may ask the Court for a decree for such balance.

THE appellant in this case, a mortgagee who had obtained a decree against the mortgagors for the mortgage-money, costs, and

* Second Appeal No. 1306 from an order of T. R. Wyer, Esq., District Judge of Sháhjahánpur, dated the 23rd June, 1887, reversing an order of Munshi Chandí Prasad, Munsif of East Budaun, dated the 5th February, 1867.

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interest, and for the sale of the mortgaged property, attached certain immoveable property of the mortgagors, respondents, other than the mortgaged property. The mortgaged property had not been sold at the time. The respondents objected that the decree-holder was not entitled to proceed against the property attached until the mortgaged property had been sold. This objection the Court of first instance allowed so far as to stay any further proceedings in respect of the attached property, and to direct the decree-holder to bring the mortgaged property to sale, but it maintained the order of attachment. On appeal by the judgment-debtors the lower appellate Court ordered that the attachment should be removed. The decree-holder appealed to the High Court.

Pandit *Moti Lal Nshru*, for the appellant.

Mr. *Amiruddin*, for the respondents.

STRAIGHT, J.—I think the learned Judge was right. The appellant decree-holder had obtained a decree on his mortgage-security for sale of the mortgaged property, and it was the business of the Court executing it to proceed in the manner directed by ss. 88, 89 and 90 of the Transfer of Property Act. In my opinion, the presumption should be that immoveable property which a mortgagee has accepted as adequate security for his loan to the mortgagor will, if sold, realise enough to satisfy his charge, and this view seems to me to be borne out by the sections of the Act referred to above, more particularly by the provisions contained in s. 90. I do not think under the law as it now stands, that a mortgagee with a decree for sale of the mortgaged property, the execution of which is now specially provided for in the Transfer of Property Act, can treat such decree as one for money, which entitles him to ask for attachment of the other property of his mortgagor judgment-debtor; on the contrary, what I think the statute means and says, is, that he must first sell the mortgaged property, and if it does not fetch enough to pay his charge, interest and costs, then he may ask the Court for a decree for the money balance, if it is recoverable personally from the defendant and his other property, and execute that in the ordinary manner as a money-decree is executed. I dismiss the appeal with costs.

Appeal dismissed.

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