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SALONI
v.
HAB MAL.

The distinction which the Commissioner of Jhānsi has very properly drawn between the original cause of action in and the cause of action in this suit, is illustrated in the judgment in *King v. Hoare* (1).

The appeal is dismissed with costs.

Appeal dismissed.

1886
May 4.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Mahmood.

GAJADHAR AND OTHERS (DEPENDANTS) v. MUL CHAND AND OTHERS
(PLAINTIFFS).*

Mortgage—Sale of equity of redemption—Suit by mortgagee for sale of mortgaged property—Purchaser not a party to suit—Sale of mortgaged property in execution of decree obtained by mortgagee—What passed—Right of purchaser of equity of redemption—Redemption.

On the 21st December, 1871, three of the defendants in this suit mortgaged four groves to *H*. In 1872 the plaintiffs obtained a money-decree against one *D*, and in August, 1872, in execution of that decree, sold the said groves and at the sale purchased them and also two mills which were not in dispute in this suit. The decree against *D* has been found to have the same effect as if it were had and obtained against all the mortgagors. Of this sale *H* had notice, in fact he opposed it. Subsequently *H*, the mortgagee, sued the mortgagors on their mortgage, and obtained a decree on it, and under the decree brought the said groves to sale in 1877, and purchased them himself. In May, 1880, *H* sold the groves to two of the defendants. The plaintiffs, who were not parties to the suit which resulted in the decree under which the groves were sold in 1877, instituted this suit for possession of the groves.

Held, that notwithstanding the sale of 1872, what was sold under the decree of 1877 was the right, title and interest of the mortgagors, as they existed at the date of the mortgage of 21st December, 1871, with which would go the rights and interests of the mortgagee, and although at a sale under a decree for sale by a mortgagee the right, title and interest of the mortgagor which is sold is his right, title and interest at the date of the mortgage, and any right, title and interest he may have acquired between the date of the mortgage and of the sale, still any puisne incumbrancer or purchaser from the mortgagor prior to the date of the mortgagee's decree and who was not a party to the suit in which the mortgagee obtained his decree, would have the right to redeem the property which the mortgagor would have had but for the decree. This view is consistent with the principles of equity and recognised by the Transfer of Property Act.

* Second Appeal, No. 1651, of 1886, from a decree of J. Deas, Esqr., District Judge of Jaunpur, dated the 23rd of June, 1886, confirming a decree of Muhammad Nasarullah Khan, Subordinate Judge of Jaunpur, dated the 1st December, 1884.

Muhammad Sami-ud-din, v. Man Singh (1) followed.

The following cases were referred to and considered in the judgment :—

Abdulla Sziba v. Abdulla (2), *Mohan Manor v. Toga Uka* (3), *Ehsab Chand v. Kalian Das* (4), *Ali Hasan v. Dhirja* (5), *Sita Devi v. Amir Begam* (6), *Bheep Singh v. Gulab Bai* (7), *Ramanath Das v. Boloram Phookur* (8), *Naran Parshotam v. Dolatram Virochund* (9).

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GASADHAR,

MUL CHAND

THIS was a suit for possession of certain groves and two sugar mills.

The plaintiffs in the suit had in the year 1872 obtained a decree for rent against one Durga, and in August, 1872, in execution of that decree, caused the groves and mills to be sold, and at the sale purchased them themselves. Prior to this, that is, on the 21st of December, 1871, the defendants, Durga Dubey and his brothers Ramessar, Jagessar and Purnessar, had mortgaged the four groves to one Maulvi Hyder Husain. Maulvi Hyder Husain had notice of the sale to plaintiffs, in fact, he opposed the sale. He then brought a suit against the mortgagors and obtained a decree on his mortgage, and under that decree brought the groves to sale in July, 1877, and purchased them himself. The plaintiffs were not made parties to this action, nor does it appear that they ever had objected to the sale by Maulvi Hyder Husain. In the month of May, 1880, Maulvi Hyder Husain sold the groves to the defendants Purnessar Dubey and Sundar Dubey, and in May, 1882, they were recorded by the Settlement Officer as the owners of the groves and the objections of the plaintiffs to this record being made, were disallowed.

The plaintiffs alleged that they were dispossessed of the groves by the defendants in the year 1882 and brought this suit.

The defendants in their answer contended, amongst other contentions, that, as Maulvi Hyder Husain had purchased the groves at a sale under a decree enforcing a lien upon the groves which had existed prior to the plaintiffs' purchase in 1872, their title derived from Maulvi Hyder Husain ought to prevail over that of the plaintiffs'.

(1) I. L. R., 9 All., 125.

(5) I. L. R., 4 All., 518.

(2) I. L. R., 5 Bom., 8.

(6) I. L. R., 8 All., 324.

(3) I. L. R., 10 Bom., 224.

(7) Weekly Notes, 1886, p. 70.

(4) I. L. R., 1 All., 240.

(8) I. L. R., 7 Calc., 677.

(9) I. L. R., 6 Bom., 538.

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The learned Subordinate Judge of Jaunpur decided that the title of the plaintiffs was superior to that of the defendants, and decreed possession of the groves with a certain amount of damages in favor of the plaintiffs.

In appeal to the learned Judge of the district, the defendants again contended that what was sold in the year 1872, at the instance of the plaintiffs, was subject to the lien upon the groves created in favor of Maulvi Hyder Husain in December, 1871, and therefore they, as representatives of Hyder Husain, had the better and superior title. The learned Judge held that inasmuch as the plaintiffs, who were owners of the groves at the time when Maulvi Hyder Husain brought his suit on his mortgage, were not made parties to the suit, the decree obtained by him did not bind them, and further as the property sold in 1877 did not then belong to the judgment-debtors of Maulvi Hyder Husain, he acquired no title to the groves by their sale at auction in his favor, and consequently the defendants acquired no title to the groves in suit by their purchase from Maulvi Hyder Husain. The appeal was accordingly dismissed.

In second appeal the defendants again urged the above contention.

Mr. G. T. *Spankie*, for the appellants.

Mr. *Amir-ud-din*, for the respondents.

EDGE, C. J.—This is an action for possession. The plaintiffs allege that they were ejected by the defendants. The defendants deny that the plaintiffs were ever in possession. There are no findings on this issue. The questions under appeal have been brought before us on different lines. On the 21st December, 1871, three of the defendants mortgaged the four groves in suit to Maulvi Hyder Husain. In 1872 the plaintiffs obtained a money-decree against Durga, and in August, 1872, in execution of that decree, sold the groves in question, and at the sale purchased them, and also two mills. It has been found below that that decree had the same effect as if it had been against all the mortgagors. Of this sale Maulvi Hyder Husain had notice; in fact, he opposed the sale. At a later period Maulvi Hyder Husain, the mortgagee, sued the mortgagors on the mortgage, and obtained a decree on the

mortgage, and under that decree brought the groves to sale in 1877, and purchased them himself. In May, 1880, Maulvi Hyder Husain sold the groves to two of the defendants. It is quite clear that the plaintiffs are entitled to a decree for possession so far as the two mills are concerned. The title to them has not been disputed before us. What we have to consider is what is the position of the parties with regard to the property which was mortgaged on the 21st December, 1871. The plaintiffs were not made parties to the action which resulted in the decree under which Maulvi Hyder Husain sold the property in 1877.

A great number of cases have been cited to us in the argument in this case.

I think there can be no doubt that notwithstanding the sale of 1872, what was sold under the decree of 1877 was the right, title and interest of the mortgagors as they existed at the date of the mortgage of the 21st December, 1871, with which would go the rights and interests of the mortgagee. I think this proposition is established by the following authorities:—*Abdulla Saiba v. Abdulla* (1) and *Mohan Minor v. Togu Uka* (2). The same principle is enunciated by Mr. Justice Turner in the case of *Khub Chand v. Kalian Das* (3). That, in my judgment, is subject to this, that although at a sale under a decree for sale by a mortgagee, as in this case, the right, title and interest of the mortgagor which is sold is his right, title and interest at the date of the mortgage, and any right, title, and interest he may have acquired between the date of mortgage and of the sale, still any puisne incumbrancer or purchaser from the mortgagor prior to the date of the mortgagee's decree who was not a party to the action in which the mortgagee's decree was obtained, would have the right to redeem the property which the mortgagor would have had had it not been for the decree. I am aware that this view is at variance with the decisions of this Court in the following cases:—*Khub Chand v. Kalian Das* (4), *Ali Husain v. Dhirja* (5), *Sita Ram v. Amir Begam*, (6). With regard to the latter case my brother Mahmood followed the ruling of Mr. Justice Turner in *Khub*

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(1) I. L. R., 5 Bom., 8.
 (2) I. L. R., 10 Bom., 224.
 (3) I. L. R., 1 All., 245.

(4) I. L. R., 1 All., 240.
 (5) I. L. R., 4 All., 518.
 (6) I. L. R., 8 All., 324.

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GAJADHAB
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Chand v. Kalian Das (1). My brother Mahmood expressed his doubts in *Bhup Singh v. Gulab Rai* (2) as to the correctness of the rule laid down by Mr. Justice Turner. My view in regard to the conflict of authority when it is considered is that it is safer for us to follow the principle which my brothers Straight and Tyrrell laid down in the case of *Muhamad Sami-ud-din v. Man Singh* (3), particularly as that principle has been recognised and acted on by the High Court of Bombay, and is consistent, in my view, with the true principles of equity. It is also the principle which has been recognised in the Transfer of Property Act. Mr. *Amir-ud-din* contended for the respondents that nothing passed at the sale in 1877, and for that proposition he relied on the case of *Ramanath Dass v. Boloram Phookun* (4), and the case of *Naran Purshotam v. Dolatram Virchand* (5). The case in I. L. R., 7 Calc., 677, apparently assumed that what could be sold was the mortgagor's right at the date of the sale. The case in I. L. R., 6 Bom., 538 does not appear to me to be in support of Mr. *Amir-ud-din's* contention. I am of opinion that this action must fail in so far as it claims possession of the four groves, and that it must succeed so far as the possession of the two mills are claimed. We make a decree that the plaintiffs may redeem if they commence proper proceedings to ascertain the amount within six months. The appellants will succeed as to the four groves and the Rs. 20 damages for the mango trees and will fail as to their claim for the two mills. Under these circumstances I think the appeal should be allowed in part and dismissed in part without costs.

BRODHRUST, J.—I concur.

*Appeal dismissed.*1888
May, 7.

Before Mr. Justice Straight and Mr. Justice Mahmood.

JAG LAL (DEFENDANT), v. HAR NARAIN SINGH (PLAINTIFF).*

Act XV of 1877 (Limitation Act), ss. 5, 15—Admission of appeal beyond time—“Sufficient cause”—Appeal filed in wrong Court—Bona fide proceedings—Jurisdiction—valuation of suit.

Questions of jurisdiction, whether with reference to the nature of the suit or with reference to the pecuniary limits of the claim, are matters to be governed by the

* First Appeal No. 207 of 1886, from a decree of Rai Manmohan Lal, Subordinate Judge of Aramgarh, dated the 11th June, 1886.

(1) I. L. R., 1 All., 240.

(3) I. L. R., 9 All., 125.

(2) Weekly Notes, 1886, p. 70.

(4) I. L. R., 7 Calc., 677.

(5) I. L. R., 6 Bom., 538.