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defeated and his right of appeal barred by the effect of the Limitation Act, 1877, and be left without any remedy against a decree which might be open to question. For the above reasons we are unable to hear the objections filed by the respondent, and hold that they have fallen with the withdrawal of the appeal.

Under s. 220 of the Code of Civil Procedure, we make an order directing the appellant, Syed Jafar Husain, to pay the taxed costs of this appeal to the respondent, Chaudhri Ranjit Singh.

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April 17.

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

MAHABIR SINGH AND ANOTHER (PLAINTIFFS) v. SAIRA BIBI AND ANOTHER
(DEFENDANTS).*

*Act No. IV of 1882 (Transfer of Property Act), s. 99—Usufructuary mortgage—
Suit by mortgagee for sale of equity of redemption of mortgaged property in
execution of a decree for mesne profits and costs.*

Certain usufructuary mortgagees not having been put in possession of the mortgaged property by the mortgagor sued and obtained a decree for possession with mesne profits and costs. Under this decree the mortgagees were put in possession of the mortgaged property. They then applied for attachment and sale of the mortgaged property in execution of their decree for mesne profits and costs. This application was disallowed. The mortgagees then brought a suit for sale of the equity of redemption of the mortgaged property reserving their rights and interests under the mortgage. *Held*, that such a suit would not lie as being opposed to the intention of s. 99 of the Transfer of Property Act, 1882. *Azim-ullah v. Najm-un-nissa* (1) and *Jadub Lall Shaw Chowdhry v. Madhub Lall Shaw Chowdhry* (2) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. *Abdul Raooof* for the appellants.

Munshi *Ram Prasad* and Babu *Durga Charan Banerji* for the respondents.

EDGE, C. J., and BANERJI, J.—The plaintiffs in the suit in which this appeal has arisen were usufructuary mortgagees under

* First Appeal No. 106 of 1892, from an order of Munshi Lalta Prasad, Additional Subordinate Judge of Gházipur, dated the 25th February 1892.

(1) I. L. R., 16 All., 415.

(2) I. L. R., 21 Calc., 34.

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a mortgage of the 19th of June 1883, which had been made in their favor by the defendants in the suit or by those under whom they claimed. The plaintiffs had been kept out of possession of the mortgaged property, and were obliged to bring a suit for possession. They brought a suit claiming not only possession, but also *mesne* profits, and on the 30th of January 1889, they obtained a decree for possession, for *mesne* profits and for costs. The plaintiffs-mortgagees were put in possession under the usufructuary mortgage of the 19th of June 1883, in pursuance of the decree of 30th of January 1889. They then sought to attach for the purpose of bringing to sale the mortgaged property in satisfaction of that part of their decree of the 30th of January 1889 which decreed them *mesne* profits and costs. The Subordinate Judge before whom the application for attachment was made dismissed the application, holding that s. 99 of Act No. IV of 1882 barred the plaintiffs' claim to execute their decree by the sale of the mortgaged property. That order was confirmed on appeal by this Court, and, after the decision of this Court in appeal, the plaintiffs brought the suit out of which this appeal has arisen. In this suit they asked for a decree for sale of the equity of redemption maintaining the rights and interests of the plaintiffs as mortgagees. The Subordinate Judge dismissed the suit, holding that by reason of ss. 99 and 66 of Act No. IV of 1882 the suit did not lie. The plaintiffs brought this appeal from that decree.

Section 99 was enacted with the object of preventing a mortgagee bringing the mortgaged property to sale except in pursuance of a decree obtained in a suit allowed by s. 67. Prior to the passing of Act No. FV of 1882 it was the constant custom of mortgagees to obtain, on other causes of action than their mortgages, decrees for money against the mortgagor, to bring the mortgaged property to sale in execution of those money decrees, and to have it sold, reserving their rights as mortgagees. The result of that was that in such cases, the sale being notified as one in which the property to be sold was subject to a mortgage, purchasers would not come forward to run the risk of harassing

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litigation with the mortgagee in future suits, and the mortgagee or his *benamidar* was left in possession of the field, and in too many instances purchased the mortgagor's interest in the property for a mere song, and having got by such sale the mortgagor's interest for practically a trifling price, the mortgagee got the whole property into his hands. It was found from experience that the result of such a state of things was that the properties passed out of the hands of mortgagors into the hands of mortgagees in many cases for far less than their value, counting the mortgage-debt and the price paid at the sale under the money decree together. It was also found that such a state of things encouraged litigation, and it was to provide a remedy and to prevent the recurrence of such a state of things that s. 99 was enacted. It has been contended that in such cases the plaintiffs are placed in a difficult position. They are not entitled to bring a suit for sale under s. 67 on their mortgage, the mortgage being usufructuary, and it is suggested that by the time when they cease to be mortgagees, when s. 99 would cease to operate, their decree for money might be barred by limitation.

There may be in such cases individual hardships, but the law must have regard to the benefit of the greater number, and not to the particular benefit of persons in individual cases seldom occurring. There was nothing to prevent the respondents executing their decree of the 30th of January 1889, against property of their judgment-debtors other than the property the subject of the mortgage of the 19th of June 1883. We need not decide whether the plaintiffs have now a remedy against the property of their judgment-debtors other than the mortgaged property.

This suit in fact was brought not in accordance with the intention of the Legislature as announced in s. 99 of Act No. IV of 1882, but in contravention of the provisions of that section. We are supported in the view which we take by the decision of this Court in *Azim-ullah v. Najm-un-nissa* (1) and the decision in *Jadub Lall Shaw Chowdhry v. Madub Lall Shaw Chowdhry* (2).

We dismiss this appeal with costs.

Appeal dismissed.

(1) I. L. R., 16 All., 415.

(2) I. L. R., 21 Calc., 34.