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possession became thereupon a decree absolute, and the confirmation of that decree in second appeal by this Court could not alter the position of the parties. Before such confirmation the decree had become an absolute decree for possession, and unless the defendant obtained in his second appeal an extension of the time allowed to him for redeeming the prior mortgage, he became foreclosed of his right to redeem that mortgage. If the law were otherwise, the defendant in a suit for sale or the plaintiff in a suit for redemption would be able to obtain an extension of the time allowed to him to pay the mortgage money merely by the fact of preferring an appeal. The cases to which the learned Subordinate Judge referred were considered in the case of *Jaggar Nath Pande v. Jokhu Tewari* mentioned above and the principles enunciated in them were not accepted.\* In my judgment, in the absence of any specific extension by the appellate Court of the time allowed by the Court of first instance for the redemption of a mortgage, the time within which redemption could take place is to be computed from the date of the decree of the Court of first instance. I allow this appeal, and, setting aside the decree of the Court below, restore that of the Court of first instance with costs here and in the Court below.

*Appeal decreed.*

\* [The cases upon which the judgment of the Subordinate Judge was based were the following:—*Daulat and Jagjivan v. Bhukandas Manekchand* (1) *Noor Ali Chowdhuri v. Kovi Meah* (2) and *Rup Chand v. Shams-ul-jehan* (3).]

*Before Mr. Justice Banerji.*

DHARMA AND OTHERS (DEFENDANTS) v. BALMAKUND AND OTHERS  
(PLAINTIFFS).\*

*Mortgage—Redemption—Limitation—Acknowledgment—Act No. XIV of 1859, section 1, cl. 15—Act No. XV of 1877, Sch. ii, Art. 148.*

*Held* that an acknowledgment of the title of the mortgagor made by one only of two mortgagees would not avail to save the mortgagor's right of redemption being barred by limitation, where the mortgage was a joint mortgage and not capable of being redeemed piecemeal. *Bhogilal v. Amritlal* (4) referred to.

\* Second Appeal No. 40 of 1896, from a decree of H. G. Pearse, Esq., District Judge of Agra, dated the 9th January 1896, reversing a decree of Babu Prithi Nath, Munsif of Muttra, dated the 21st November 1895.

(1) I. L. R., 11 Bom., 172.

(3) I. L. R., 11 All., 346.

(2) I. L. R., 13 Calc., 13.

(4) I. L. R., 17 Bom., 173.

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THE facts of this case were as follows:—

The plaintiffs, alleging themselves to be the descendants of the original mortgagors, sued for redemption of a mortgage said to have been made by their ancestors in favour of two persons, Udai Ram and Khushhali, whose representatives the defendants were alleged to be.

The defendants pleaded that the mortgage was more than one hundred years old and that the claim for redemption was consequently barred by limitation.

The Court of first instance (Munsif of Muttra) found that the date put forward by the plaintiffs as the date of the mortgage was unreliable, and, applying the principle of the case of *Parmanand Misr v. Sahib Ali* (1) dismissed the suit.

The plaintiffs appealed. The lower appellate Court (District Judge of Agra) found that, although the date of the mortgage was not proved, at the revision of settlement, which took place in 1852, both Udai Ram and Khushhali acknowledged the title of the plaintiffs' predecessors in title, although the settlement records were signed by one only. The District Judge held that this acknowledgment was sufficient to save limitation, and accordingly decreed the appeal, relying on the case of *Jamna Prasad v. Gokla* (2).

The defendants appealed to the High Court.

Mr. *E. A. Howard* and Babu *Badrī Das* for the appellants.

Mr. *T. Conlan* for the respondents.

BANERJI, J.—The suit out of which this appeal has arisen was brought for the redemption of a mortgage, which was alleged by the defendants to have been made more than one hundred years before the date of the suit. The averment of the defendants as to the date of the mortgage was not repudiated by the plaintiffs. The mortgage having thus been made more than sixty years before suit, the claim for redemption would be barred by limitation under article 148 of schedule II of Act No. XV of 1877, unless it could be shown that an acknowledgment of the mortgagor's

(1) I. L. R., 11 All., 438.

(2) Weekly Notes 1894, p. 87.

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right had been made before the expiry of the period of limitation in the manner required by law. What happened in this case, as found by the learned Judge below, was that at the time of the revision of settlement the title of the mortgagor was acknowledged by Udai Ram and Khushhali, the two mortgagees, but the settlement *khewat* was signed by only one of them. This, it is alleged, took place in 1852. Had the mortgage been only in favour of the person who signed the *khewat*, there can be no doubt that an acknowledgment by him of the title of the mortgagor would have given the mortgagor a fresh start for the computation of limitation. Before Act No. XIV of 1859 came into operation there was no limitation for a suit for redemption. It was under clause 15 of section 1 of that Act that a limitation of sixty years was for the first time provided for such a suit, to be computed from the date of the mortgage, unless an acknowledgment of the title of the mortgagor, or of his right of redemption, had been given in writing signed by the mortgagee, or some person claiming through him, in which case limitation would run from the date of acknowledgment. Act No. XIV of 1859 applied to the mortgage in question, and, as the said mortgage was more than sixty years old when that Act came into operation, a claim to redeem the mortgage would have been barred by limitation, had no acknowledgment of the mortgagor's title been made by the mortgagees and signed by them. In this case only one mortgagee signed the acknowledgment, and therefore the acknowledgment could not avail against the mortgagee who had not signed it, and the mortgagor's right of redemption was not saved as against that mortgagee. The mortgage was made in favour of two mortgagees jointly, and it was not a mortgage in which the interests of each mortgagee could be apportioned so as to allow of the mortgage being redeemed piecemeal. In the case of such a mortgage an acknowledgment by one only of the mortgagees could not be effectual for the purpose of saving the operation of limitation. This view is in accord with the ruling

of the Bombay High Court in *Bhogilal v. Amritlal* (1). The plaintiff's claim was therefore barred by limitation and was properly dismissed by the Court of first instance. I allow the appeal with costs, and, setting aside the decree of the Court below with costs, restore that of the Court of first instance.

*Appeal decreed.*

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*Before Mr. Justice Banerji and Mr. Justice Aikman.*

THE UNCOVENANTED SERVICE BANK, LIMITED (DEFENDANT) v. ABDUL BARI (PLAINTIFF).\*

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*Civil Procedure Code, section 317—Execution of decree—Application for execution against a person alleged to be the beneficial owner though not the certified purchaser.*

The provisions of section 317 of the Code of Civil Procedure contemplate suits between the certified purchaser and the beneficial owner, and will not operate so as to bar a third party from asserting that the certified purchaser is not the beneficial owner. *Sohn Lall v. Lala Gya Pershad* (2), *Puran Mal v. Ali Khan* (3), and *Sabha Bibi v. Hara Lal Das* (4), referred to.

THE plaintiff in this case sued for a declaration that certain property which had been attached in pursuance of a decree held by the defendant Bank against his father, Abdullah, was his own property and not liable to attachment in execution of the said decree.

The property in suit had been put up to auction as the property of one Rahim Bakhsh and had been purchased by the plaintiff on the 20th of July 1889, Abdullah, the plaintiff's father, acting for him in the transaction. The sale certificate was granted in the plaintiff's name and he obtained possession.

The defendant Bank pleaded that the real purchaser of the property was Abdullah and not the plaintiff.

The Court of first instance (Munsif of Allahabad) found on the facts against the plaintiff and dismissed the suit. The plaintiff appealed.

\* Second appeal No. 453 of 1894, from a decree of W. Blennerhassett, Esq., District Judge of Allahabad, dated the 26th March 1894, reversing a decree of H. David, Esq., Munsif of Allahabad, dated the 15th January 1894.

(1) I L. R., 17 Bom., 173.

(2) N.-W. P. H. C. Rep., 1874, p. 265.

(3) I. L. R., 1 All., 235.

(4) I. L. R., 21 Calc., 519.