

in section 503 at its discretion, or could determine whether the appointment of a receiver was at all expedient or necessary. We think that if the Legislature had intended to confer on a District Court the power of appointing without nomination by a Subordinate Court any person as receiver, appropriate words for that purpose would have been used in the Act. The expression used in section 505 is not that the District Court may appoint, but may authorize the Subordinate Judge to appoint. Those words, it seems to us, are inconsistent with the wide powers contended for by the respondent. The decision of the first point urged on behalf of the appellant renders the decision of the other points unnecessary. We allow the appeal and set aside the order of the District Judge with costs.

Appeal decreed.

Before Mr. Justice Banerji.

CHIRANJI LAL AND OTHERS (DECREE-HOLDERS) v. DHARAM SINGH

(JUDGMENT-DEBTOR).*

Mortgage—Prior and subsequent mortgages—Decree giving a defendant, second mortgagee, a right to redeem a prior mortgage within a fixed period Appeal—Limitation.

When a decree gives a right of redemption within a certain specified period with a certain specified result to follow if redemption is not made within such period, the mere fact of an appeal being preferred against it will not suspend the operation of such decree, and, unless the appellate court extends the period limited by the original decree, the right of redemption will be barred if not exercised within the period so limited. The principle in *Jaggan Nath Pande v. Joku Tewari* (1) applied.

THE facts of this case are fully stated in the judgment of Banerji, J.

Munshi *Gobind Prasad* for the appellants.

Babu *Jogindro Nath Chaudhri* for the respondent.

BANERJI, J.—This appeal arises out of proceedings relating to the execution of a decree passed in favour of the appellants. The facts of the case are these. One Moti Singh made a simple mortgage of some property in favour of one Durga Prasad in 1871.

* Second Appeal No. 889 of 1895, from a decree of Babu Bopin Behari Mukerji, Subordinate Judge of Aligarh, dated the 26th June 1895, reversing a decree of Babu Gauri Shankar, Munsif of Haveli, Aligarh, dated the 17th November 1894.

(1) I. L. R., 18 All., 223.

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He afterwards made a usufructuary mortgage of the same property in favour of Dharam Singh, the respondent, in 1878. In 1881 a decree for sale was obtained on the first mortgage. The second mortgagee was not joined as party to the suit for sale. In execution of that decree a part of the mortgaged property was sold, and it was purchased by the predecessor in title of the appellants. As the second mortgagee was in possession under his usufructuary mortgage the appellants brought a suit against him for possession of the property purchased by them at auction in satisfaction of the prior mortgage. That suit was resisted on the ground that the second mortgagee, not having been made a party to the first mortgagee's suit, had not been foreclosed of his right to redeem the first mortgage, and therefore the purchaser in execution of the decree made on the first mortgage was not entitled to possession as against him. The suit was dismissed by the Court of first instance, but the lower appellate Court made a decree for possession in favour of the appellants on the 1st of April 1892, subject to the condition that the defendant, the second mortgagee, would have the option of redeeming the prior mortgage and retaining the property by payment of Rs. 150 to the plaintiff within six months from the date of the decree. The decree was thus one for possession subject to a condition, and if that condition failed it was a decree for absolute possession. That decree was affirmed by this Court on the 18th of April 1894. The defendant, the present respondent, did not pay the Rs. 150 referred to above within six months from the 1st of April 1892, the date of the decree of the first appellate Court. Thereupon the decree-holders, present appellants, applied for execution of the decree and delivery of possession to them. The respondent, judgment-debtor, raised objections in regard to the application, urging that he was entitled to compute the six months within which he was entitled to pay Rs. 150 from the date of the decree of the High Court, and, as those six months had not expired on the date of the application for execution, the decree-holders were not entitled to obtain possession. It is admitted that the decree of this Court dated the 18th of April 1894, by which the decree of

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the first appellate Court was affirmed, did not extend the period within which the defendant was to redeem the prior mortgage. The Court of first instance disallowed the objections of the judgment-debtor, but the lower appellate Court allowed them on the strength of certain rulings to which it has referred in its judgment. The learned Subordinate Judge was of opinion that the objection was not a valid one, but he considered himself bound by the rulings cited by him and therefore allowed the objection.

It is contended in second appeal that the judgment-debtor was not entitled to compute the six months within which he was to redeem the prior mortgage from the date of the decree of this Court, that decree not having extended the time for the payment of the money. Mr. *Gobind Prasad* has relied on the recent ruling in *Jaggar Nath Pande v. Jokhu Tewari* (1). In my judgment the principle of that ruling fully governs the present case. In that case it was held with reference to a decree for pre-emption that if the sale price decreed to be paid by the plaintiff was not paid within the time allowed by the Court of first instance, and if that time was not extended by the appellate Court, the plaintiff could not pay the pre-emptive price after the expiry of the time allowed by the decree of the first Court. The same principle applies to this case. The decree of the 1st of April 1892 was a decree for possession subject to a condition, that condition being that Rs. 150 were to be paid by the defendant within six months. If the condition were fulfilled, that decree would be one dismissing the suit for possession. In the event of default being made in payment, the decree was, on the expiry of the six months, to be an unconditional decree for possession. If no appeal was preferred from that decree, and if the payment provided for by it was not made within six months, there can be no question that the decree-holder would be entitled to obtain possession by execution of the decree. By the mere fact of appealing from the decree the defendant could not extend the time allowed to him by the decree. If that time expired before the decision of the appeal by this Court, the decree for

(1) I. L. R., 18 ALL., 228.

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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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