

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.
 SHEO CHARAN SINGH (JUDGMENT-DEBTOR) v. LALJI MAL (DECREE-
 HOLDER).*

1896.
 May 12.

Act No. IV of 1882 (Transfer of Property Act), section 90—Application for decree against non-hypothecated property—Limitation—Terminus a quo.

Where in a usufructuary mortgage it was covenanted that if the mortgagee was not given possession he should have a right to obtain the sale of the mortgage property, the mortgage debt meanwhile being payable on a certain specified date, it was held that in respect of an application under section 90 of Act No. IV of 1882, the mortgaged property having been sold under the above mentioned covenant and having proved insufficient to satisfy the debt, limitation began to run from the breach of the covenant to pay on due date and not from the breach of the covenant to put the mortgagee in possession.

THIS was an application under section 90 of the Transfer of Property Act. The judgment-debtors had mortgaged certain property to the applicant by a usufructuary mortgage on the 16th of February 1883. The mortgage deed provided that the mortgage money should be repayable in a year from the date of the mortgage, and that the mortgagee should be put into possession. It also provided that if the mortgagors failed to put the mortgagee into possession, the mortgage money should be recoverable by sale of the mortgaged property. The mortgagee was not put into possession. On the 17th of August 1889 the mortgagee sued for sale of the mortgaged property and obtained a decree, and having brought the property to sale, purchased it himself. The price realized by the sale of the mortgaged property proving insufficient to satisfy the decree, the mortgagee, on the 11th of July 1893, applied for a decree against the person and other property of judgment-debtors. One of the judgment-debtors filed objections to the granting of the decree prayed for, their principal objection being that the application was barred by limitation.

The Court of first instance (Subordinate Judge of Jaunpur) gave the applicant the decree asked for.

* Second appeal No. 280 of 1894 from an order of G. F. G. Forbes, Esq., Officiating District Judge of Jaunpur, dated the 7th March 1894, reversing an order of Rai Anant Ram, Subordinate Judge of Jaunpur, dated the 18th August 1893.

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The answering judgment-debtor appealed, and the lower appellate Court (District Judge of Jaunpur) dismissed the appeal, holding that limitation began to run only from the date when the mortgage money became payable, *viz.*, the 17th of February 1884, and that the application was consequently within time.

The appellant thereupon appealed to the High Court.

Babu *Bishnu Chandar* for the appellant.

Munshi *Gobind Prasad* for the respondent.

EDGE, C. J., and BLENNERHASSETT, J.—This is an appeal from an order in execution of a decree. The defendant had granted to the plaintiff a mortgage. It was usufructuary. It also contained a covenant for the payment of the money due on the expiration of the term, and a proviso that the mortgagee might bring the mortgaged property to sale if the mortgagor failed to deliver possession. Possession was not delivered. The mortgagee obtained a decree for sale. The sale of the property did not satisfy the amount decreed, and he sought for and obtained a decree under section 90 of the Transfer of Property Act. From that decree this appeal has been brought. It is contended that the mortgagee's remedy under section 90 was barred by limitation, the contention being that the six years' limitation began to run from the breach of the agreement to put him in possession. The suit was brought after the expiration of six years from that breach and within six years of the determination of the term of the mortgage on which the mortgagor's covenant to pay depended. We need say nothing as to whether the decree for sale might not have been opposed on the ground that the suit was not brought within six years of the breach of the covenant to put the plaintiff in possession. The remedy under section 90 was a distinct remedy from any suit under section 68 of the Transfer of Property Act, and, as the suit in which the remedy was sought and obtained was brought within six years of the breach of the covenant to pay, the amount sought to be recovered by the decree under section 90 was legally recoverable. We dismiss the appeal with costs.

Appeal dismissed.