

further proceedings in executing this decree interest at the usual rate (6%) is to be allowed to the objectors Ummat-ul-Hasnain and others up to the date of payment in execution. The objectors are entitled to costs.

Appeal dismissed.

FULL BENCH.

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BHAGWAN
SINGH
v.
UMMAT-UL
HASNAIN.

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February 25.

Before Sir John Edge, Kt., Chief Justice, Mr Justice Know, Mr. Justice Blair, Mr. Justice Hanerji, Mr. Justice Burkitt and Mr. Justice Aikman.

SHIB LAL (PLAINTIFF) v. AZMAT-ULLAH AND OTHERS (DEFENDANTS)*
Act No. IV of 1882 (Transfer of Property Act), sections 130, 135—Actionable claim—Assignment of simple mortgage before due date.

The term "actionable claim" as used in section 130 of Act No. IV of 1882 means a claim in respect of which a cause of action has already matured and which, subject to procedure, may be enforced by suit.

Held that the assignment for value of a simple mortgage before the due date of the mortgage is not a sale of an actionable claim within the meaning of section 135 of Act No. IV of 1882. *Rani v. Ajudhia Prasad* (1) referred to and explained.

THE facts of this case are briefly as follows:—On the 17th of July 1876 one Karim-ullah, the father of some of the defendants to the suit, having borrowed Rs. 2,000 from Baldeo Sahai, husband of one of the other defendants, executed an hypothecation bond in his favour. On the 7th of July 1888 accounts were adjusted between the parties and a fresh bond for Rs. 4,452 was given. This latter bond however was not executed by Karim-ullah, but by one Rustam Khan, under a general power of attorney. The latter of the two bonds was payable in a year from its execution. On the 20th of June 1889 Musammatt Mulia, as heir to Baldeo Sahai, sold to Shib Lal, the present plaintiff, the bond of the 7th July 1888. The plaintiff, on the 12th July 1893, brought his suit on this bond in the Court of the Subordinate Judge of Moradabad. The Subordinate Judge dismissed the suit, holding that the execution of the bond was not proved.

* First Appeal No. 4 of 1894, from a decree of Maulvi Aziz-ul Rahman, Officiating Subordinate Judge of Moradabad, dated the 12th October 1893.

(1) I. L. R., 16 All., 315.

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The plaintiff appealed to the High Court, and when the appeal came on for hearing, the respondents raised the question whether in any case the appellant was entitled to more than would be due to him under section 135 of the Transfer of Property Act. This question was thereupon referred to the Full Bench together with the question whether such a defence could be raised for the first time in appeal.

Pandit *Sundar Lal* and *Munshi Gobind Prasad* for the appellant.

Munshi Jwala Prasad, *Babu Bishnu Chandar* and *Maulvi Ghulam Mujiaba* for the respondent.

The judgment of the Court [EDGE, C. J., KNOX, BLAIR, BANERJI, BURKITT and AIKMAN, JJ.] was delivered by EDGE, C. J.:—

The suit in which this reference to the Full Bench has arisen was one for sale under section 88 of the Transfer of Property Act. The plaintiff in the suit was the assignee of an alleged simple mortgage bond upon which the suit was brought. The execution of the bond was denied. The first Court found that the bond had not been made by the alleged mortgagor and dismissed the suit. On appeal to this Court the suit was decreed in the absence of the defendant-respondent; but, on its being proved that it was through misadventure that the defendant was not represented at the hearing in this Court, the *ex parte* decree of this Court was set aside and the appeal reinstated on the list for hearing. When the appeal came on to be heard the vakil for the respondent claimed that his client was entitled to take advantage of section 135 of the Transfer of Property Act. Two questions were referred for decision to the Full Bench. The first question was:—"Is the assignment for value of a simple mortgage before the due date of the mortgage a sale of an actionable claim within the meaning of section 135 of Act No. IV of 1882?" The second question was:—"If such assignment is the sale of an actionable claim, can the defendants respondents at this stage of the litigation avail themselves of section

135?" The assignment in question was made before the mortgage money became payable.

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We have been referred in the course of the arguments to the following cases:—*Lala Jugdeo Sahai v. Brij Behari Lal*, (1) *Modun Mohun Dut v. Futtar-un-nissa*, (2) *Rathnasami v. Subramanya* (3) *Singarachari v. Sivabai*, (4) *Ramachandra v. Venkatarama*, (5) *Hakim-un-nissa v. Deo Narain*, (6) *Moti Ram v. Jeth Mal*, (7) *Rani v. Ajudhia Prasad*, (8) *Muchiram Barik v. Ishan Chunder Chuckerbutti*, (9) *Ramakrishna v. Kurikal*, (10) and *Jamal-ud-din Khan v. Bari Nath* (11).

The answer to the first question must depend in our opinion upon the construction of section 130 of the Transfer of Property Act. On the one hand it has been contended that that section which is a section of definition applies not only to a claim at present capable of enforcement by suit in the Civil Court but also to a claim in respect of which the cause of action has not at present arisen, but which in the future will mature into a claim which will then be enforceable in a Civil Court. The wording of section 130 is not absolutely free from doubt, but it is impossible for us to hold that a claim is actionable unless it is a claim in respect of a cause of action which has already matured and which, subject to procedure, may be enforced by suit. If it was the intention of the Legislature that Chapter VIII of the Transfer of Property Act should apply not only to claims in respect of which at the time of the transfer a cause of action was complete and ripe, but also to claims in respect of which a cause of action had not already arisen, it would have been easy for the Legislature to have used appropriate language to convey its meaning. We cannot construe the "actionable claim" of section 130 as co-extensive with the English legal term "chase in action." Chapter VIII of the Transfer of Property Act was presumably passed, so far as its principal provisions are concerned,

(1) I. L. R., 12 Calc., 505.

(6) I. L. R., 13 All., 102.

(2) I. L. R., 13 Calc., 297.

(7) I. L. R., 16 All., 313.

(3) I. L. R., 11 Mad., 56.

(8) I. L. R., 16 All., 315.

(4) I. L. R., 11 Mad., 498.

(9) I. L. R., 21 Calc., 568.

(5) I. L. R., 13 Mad., 516.

(10) I. L. R., 11 Mad., 445.

(11) Weekly Notes, 1890, p. 24.

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in order to discourage traffic in litigation. No doubt traffickers in litigation may purchase an unripe claim, or may wait and purchase a ripe claim, but the Legislature may have thought that there was good reason for limiting the application of section 135 to cases in respect of which at or before the time of sale a suit could have been brought in a Civil Court, and may have thought it unadvisable that section 135 should be applicable to the transfer of claims which had not matured into claims which were actionable. If a man had a cause of action, or a supposed cause of action, good, if the facts relied on were true, he probably would seek to enforce his cause of action and to derive the utmost benefit from it by bringing his suit on his own behalf in respect of it. Where, however, a man transfers such right as he has to maintain a suit to a third person after his alleged cause of action has arisen (and by cause of action we mean everything necessary to the maintenance of the suit), a suspicion would arise that the purchaser was speculating in litigation. On the other hand, it might be impolitic to attempt to restrain the free transfer of claims which had not matured into causes of action. For instance, a merchant might sell a consignment of goods on the term of a year's credit being given for payment. He might immediately afterwards find it necessary to raise money to carry on his business or to meet his liabilities, and consequently might wish to sell the debt, which would not be due and payable until the expiration of the year. The purchaser of that debt, even assuming that the debtor were a man of credit and responsibility, would not give the full value of the debt at the time when the debt would become payable. He would give at the outside the present value of a debt of that amount payable one year hence. It is obvious that in such a transaction the price actually paid would be the then discount value. The interest which a Court might allow might not be an adequate compensation for the loss to the purchaser of the use of the money paid as the actual price. Again, if section 135 were to apply to the sale of a claim which had not been actionable at the time of the sale, it would apply in the following case. A man insures his life for Rs. 20,000

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payable on his death. Owing to the necessity of finding money for his business he is obliged to assign, for value the policy which he holds on his own life. At the time of the sale the present value of the policy might be only Rs. 1,000, and yet, if the purchaser paid Rs. 1,000 for it and section 135 applied, the Insurance Company could avail themselves of section 135 at the death of the person insured and discharge their liability by payment of Rs. 1,000 and some interest. There is no case, so far as we are aware, in which an actionable claim has been held to be a claim in respect of which at the date of transfer an action could not have been brought. In this case, as the assignment of the simple mortgage took place before the debt for which the mortgage was security became due and payable, and consequently before a suit could have been maintained for the payment of that debt and for the enforcement or discharge of the debt by sale of the mortgaged property, we hold that the defendants-respondents could not avail themselves of section 135.

The Full Bench decision of this Court in the case of *Rani v. Ajulhia Prasad* (1) did not decide this precise point. It was there said by the Court:—“Now there cannot be any doubt in this case that on the facts the original mortgagee had, when he sold to the present plaintiff his rights under the mortgage, a claim against the mortgagors which a Civil Court would recognise as affording grounds for granting the relief contemplated by section 68 of Act No. IV of 1882, *plus* the right to ask for the sale of the property in satisfaction of the debt as contracted for by the mortgage.” The latter portion of the sentence which we have quoted was probably not sufficiently explicit. It was not intended to suggest that a usufructuary mortgagee as such could obtain a decree for sale on his mortgage of the mortgaged property. What we intended to express in that case was that the usufructuary mortgagee having been kept out of possession might maintain a suit for the mortgage money, and in execution of his money decree in that suit might obtain the sale of the hypothecated property as the whole

(1) I. L. R., 16 All., 315.

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or part of the property of the judgment-debtor. The Court ordering execution of the decree might order a sale of other property and not of the hypothecated property. We refer to this in order to avoid any mistake as to our meaning.

Under these circumstances it is not necessary to answer the second question referred to the Full Bench. With this answer the appeal will go back for disposal to the Bench which made the reference.

1896

March 28.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Know, Mr. Justice Blair, Mr. Justice Banerji, Mr. Justice Burkitt and Mr. Justice Aikman.

SHFO NARAIN RAI AND OTHERS (DEFENDANTS) v. PARMESHAR RAI AND OTHERS (PLAINTIFFS).*

Act No. XII of 1881 (N. W. P. Rent Act) sections 36, 39, 95 (e), 96(h)—Jurisdiction—Civil and Revenue Courts—Suit in a Civil Court for a declaration on a question of title decided by a Court of Revenue under section 39 of Act No. XII of 1881—Res judicata.

The defendants served a notice of ejectment under section 36 of Act No. XII of 1881 on the plaintiffs, alleging the plaintiffs to be their sub-tenants and themselves to be tenants with a right of occupancy. The plaintiffs objected that they, and not the defendants, were the tenants in chief of the land in question. This objection was decided, under section 39 of the said Act, by a Court of Revenue adversely to the plaintiffs. The plaintiffs thereupon sued in a Civil Court for a declaration that they were tenants with a right of occupancy and for maintenance of possession.

Held that, inasmuch as section 96 (h) of Act No. XII of 1881 gave to a decision of a Court of Revenue under section 39 the effect of a judgment of a Civil Court, the hearing of the plaintiffs' present suit by a Civil Court was barred.

The principle of the decision in *Tarapat Ojha v. Ram Ratan Kuar* (1) affirmed.

The jurisdiction of Civil Courts and Courts of Revenue in the North-Western Provinces considered.

THIS was a reference to the Full Bench made by an order of a Division Bench dated the 30th of May 1894.

The facts of the case sufficiently appear from the judgment of the majority of the Court

Munshi *Gobind Prasad* for the appellants.

Munshi *Jwala Prasad* for the respondents.

* Second Appeal No. 543 of 1893 from a decree of Pandit Bansidhar, Subordinate Judge of Gházipur, dated the 17th April 1893, reversing a decree of Babu Srish Chandar Bose, Munsif of Gházipur, dated the 24th December 1892.

(1) I. L. R., 15, All., 387.