

1895

AKHARA  
PANCHAJATI  
v.  
SUBA LAL.

were applied to a suit by a subsequent mortgagee where the prior mortgage was a usufructuary one, the subsequent mortgagee might by reason of limitation be prevented from availing himself of the benefits of section 90 of Act No. IV of 1882, in case his decree for sale when obtained and executed did not satisfy the subsequent mortgage.

In our opinion the decision of the majority of the Court in *Mata Din Kasodhan v. Kazim Husain* governs this case, and that case appears to us to have decided that a decree for sale under Act No. IV of 1882 cannot be merely a decree for sale of what is known in England as the equity of redemption but must be a decree for sale of the mortgaged property itself. Further, it appears to us that it would be impossible for the Legislature to protect persons willing to lend their money on inadequate security from loss either by the security being inadequate or being hampered by prior mortgages which might cause a suit by a subsequent mortgagee to be barred by limitation. In the present case the plaintiffs brought their suit before the time when they could in it ask for redemption of the usufructuary mortgage. In other words their suit was premature. Following *Mata Din Kasodhan v. Kazim Husain* and on the ground that the plaintiffs' present suit has been prematurely brought, we allow this appeal and dismiss the plaintiffs' suit with costs in all Courts.

*Appeal decreed.*

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Burkhitt.*

THE COLLECTOR OF M'ZAFFARNAGAR (DEPONDANT) v. HUSAINI  
BEGAM (PLAINTIFF).

*Civil Procedure Code, sections 272, 532—Devolution of interest during pendency of suit—Assignment of decree prior to appeal—Application to substitute name of assignee as respondent to appeal—"Suit."*

An application was made by an appellant to substitute for the name of the person originally named as respondent to the appeal, the name of a person to whom the decree had been assigned before the filing of the appeal, such application being made more than two years after notice of the assignment had reached the appellant. The person whose name was so sought to be substituted as respondent objected to being placed upon the record of the appeal. *Held* that the name of the proposed respondent should not be placed on the record.

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*Seemle* that section 372 of the Code of Civil Procedure does not apply to a case where the devolution of interest occurs between the time of the passing of a decree and the time of the filing of an appeal from that decree.

THE facts of this case are sufficiently stated in the judgment of the Court.

Mr. *A. H. S. Reid* for the appellant.

Pandit *Sundar Lal* for the respondent.

EDGE, C. J., and BURKITT, J.—In this appeal an application was presented on behalf of the Collector of Muzaffarnagar to add one Kishori Lal as a respondent to the appeal. The application was made on the 6th of May 1895. It is resisted on behalf of Kishori Lal, who objects to being made a party to the appeal by being brought upon the record. The decree under appeal was obtained by Husaini Begam on the 7th of June 1892. It appears that that decree was assigned to Kishori Lal on the 11th of June 1892. On the 17th of September 1892, Kishori Lal's name was substituted for the decree-holder's in the Court below. The Collector had notice of these proceedings. This appeal on behalf of the Collector from that decree was presented in this Court on the 29th of October 1892, and was admitted on the 14th of November following, Husaini Begam being named in the memorandum of appeal as the respondent. Owing to the gross negligence of some one, and although the Collector was aware that Kishori Lal's name had been substituted in September 1892, no steps were taken until May 1895, to make Kishori Lal a party to the appeal. It is not for us to indicate with whom the blame rests. We are now asked to add Kishori Lal's name, and we are asked to do so under section 372 of Act No. XIV of 1882. It is very doubtful whether this section applies at all to this case. The devolution of interest here did not take place pending the appeal, it took place after the decree in the Court below and before the memorandum of appeal was presented to this Court. We are aware that under certain circumstances the term "suit" includes not only the proceedings in the first Court, but the proceedings in the appeal and up to final execution; but it appears doubtful to us whether the words "pending the suit" in section 372 can be

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construed to mean at any time from the commencement of the suit until its final determination on appeal, if there is an appeal. A reference to section 582 seems to make it obvious, that a suit under section 372 does not, in that section, and as it stands alone, include an appeal, as it is by section 582 that a Court is entitled to read the word "suit," where it appears in chapter XXI as an appeal. Further it is only in proceedings arising out of the death, marriage or insolvency of parties that section 582 enables a Court in an appeal to read the word "suit" where it occurs in chapter XXI as an appeal. The devolution of interest in the present case did not arise on a death, or on a marriage or an insolvency.

Whether section 372 applies or not, Kishori Lal, who is the only person apparently at present interested in maintaining the decree, objects to being now made a party to this appeal. As the assignee of Husaini Begam, he would be entitled to support the decree in her name, but as he objects to being brought upon the record now, we dismiss his application. The appeal will now be heard.

## REVISIONAL CRIMINAL.

1895  
November 16.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Burkitt.*

QUEEN-EMPRESS v. AGHA MUHAMMAD YUSUF.

*Act No. XLV of 1860 (Indian Penal Code), section 379—Theft—Removal by creditor of debtor's property with a view to obtaining payment of his debt.*

*Held* that the removal by a creditor against the will of his debtor of property belonging to such debtor with the view of compelling such debtor to discharge his debt amounts to theft within the meaning of section 379 of the Indian Penal Code. *Queen-Empress v. Sumeshar Rai* (1) referred to. *Prosonno Kumar Patra v. Udoy Sant* (2) dissented from.

THIS was a reference made by the District Magistrate of Fatehpur under section 438 of the Code of Criminal Procedure under the following circumstances:—

One Agha Muhammad Yusuf was charged before a Deputy Magistrate with theft in having taken away four bullocks, a cart and some other property from the possession of one Ram Adhin,

(1) *Weekly Notes*, 1888, p. 97.

(2) *I. L. R.*, 22 Cal., 669.