

Court in *Het Ram v. Baldeo* (1). As the plaintiff's equity of redemption was sold and that sale was confirmed, I hold that the mere fact of the auction purchaser not having as yet obtained a sale certificate will not entitle the plaintiff to treat the sale as a nullity, and maintain the present suit. For the above reasons I dismiss this appeal with costs.

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 CHIDDO
 v.
 PIARI LAL.

Appeal dismissed.

Before Mr. Justice Banerji.

NAKCHEDI RAM (PLAINTIFF) v. RAM CHARITAR RAI AND OTHERS
 (DEFENDANTS).*

 1896
 December 18.

Act No. IV of 1882 (Transfer of Property Act) section 68 (c)—Usufructuary mortgage—Dispossession of mortgagee by a trespasser—Suit for recovery of the mortgage money.

The words "any other person" in the concluding portion of clause (c) of section 68 of the Transfer of Property Act mean "any other person having a title". The disturbance of the mortgagee's possession by a trespasser will not confer upon the mortgagee a right to sue the mortgagor for the mortgage money. *Gopatasami v. Arunachella* (2) followed:—

THE plaintiff appellant in this case being a usufructuary mortgagee sued his mortgagors and other defendants for the recovery of the mortgage money. The facts of the case are briefly as follows:—

The defendants Nos. 1 to 4 executed a mortgage deed in favour of the plaintiff's father on the 20th of June 1885, under which 6 bighas 10 biswas 19 dhurs of land cultivated by tenants were mortgaged. The defendant No. 5 was the vendee of the property of the defendant No. 1 under the document dated the 2nd of July 1889. The defendants Nos. 6 and 7, as stated by the plaintiff, alleged themselves to be the mortgagees of a portion of the mortgaged lands. The plaintiff complained that possession was not delivered to him and that he had sued several tenants, but the suits were dismissed by the Revenue Court. The plaintiff sued

* Second Appeal, No. 13 of 1896, from a decree of Maulvi Muhammad Ismail Khan, Additional Subordinate Judge of Gházipur, dated the 29th August 1895, confirming a decree of Maulvi Muhammad Abdul Ghafur, Munsif of Muhammadabad, dated the 29th May 1895.

(1) Weekly Notes, 1894, p. 54.

(2) I. L. R., 15 Mad., 304.

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for possession and for a certain amount of interest, and, in default, of possession, for payment of the mortgage-money.

The defendant No. 1 pleaded that he had sold his property and had no further connection with it. The defendants Nos. 2 to 5 pleaded that they had done nothing contrary to the terms of the mortgage deed, that the plaintiff had all along been collecting the rent of the mortgaged land and that they had executed no mortgage in favour of the defendants Nos. 6 and 7. The defendant No. 6 did not appear. Defendant No. 7 pleaded that he was a prior mortgagee of part of the lands in question in the suit and that he could not be dispossessed until the amount of his mortgage was paid off.

The Court of first instance decreed the claim in part as against the defendants Nos. 6 and 7, but dismissed the claim for the realization of the mortgage money from the mortgagors.

The plaintiff appealed. The lower appellate Court (Additional Subordinate Judge of Ghazipur,) dismissed the appeal, holding that there had been no obstruction on the part of the mortgagors, who had done what they could to put the plaintiff mortgagee in possession. That Court also found that the persons alleged to be prior mortgagees had no concern with the property and were not in fact prior mortgagees, and that the plaintiff had no cause of action against his mortgagors.

The plaintiff appealed to the High Court.

Mr. *W. Wallach*, for the appellant.

Munshi *Jwala Prasad* and Munshi *Gobind Prasad*, for the respondents.

BANERJI J.—The plaintiff is a usufructuary mortgagee from the respondents of certain lands in the cultivation of tenants. The plaintiff sued some of the tenants for recovery of rent in a Court of Revenue. The tenants pleaded payment to defendants Nos. 6 and 7, who alleged themselves to be prior mortgagees of the land. They succeeded, and the suit for rent was dismissed. Thereupon the present suit was brought by the plaintiff, against his mortgagors, for possession of the mortgaged land and, in the

alternative, for recovery of the mortgage money. The lower appellate Court found that the mortgagors had done all they could to put the mortgagee into possession, and had not interfered with his possession, that the persons who alleged themselves to be prior mortgagees had no concern with the property and were not in fact prior mortgagees, and that the plaintiff had no cause of action against his mortgagors. On this ground the lower appellate Court has dismissed the claim against the mortgagors. It is contended here that the plaintiff is entitled to a decree for the mortgage money under clauses (b) and (c) of section 68 of Act No. IV of 1882. Clause (b) has no application, as upon the finding of the Court below the mortgagee has not been deprived of the mortgaged property by or in consequence of the wrongful act or default of the mortgagor. Clause (c) also is, in my opinion, of no avail to the plaintiff. The mortgagors did not fail to deliver possession to the plaintiff. It is urged that they failed to secure possession without disturbance by any person other than the mortgagors. As held by the Madras High Court in *Gopaldasami v. Arunachella* (1), the words "any other person" in the concluding portion of clause (c) must be held to mean any other person having a title. If a trespasser disturbs the possession of the mortgagee, that certainly cannot confer any right on him to ask the mortgagor to pay the mortgage money. In this case the tenants of the mortgaged property, who had to pay rent to the mortgagee, wrongfully refused to do so, and, if any one disturbed the possession of the mortgagee, it was the persons who falsely alleged themselves to be prior mortgagees, and not the mortgagors. Surely the mortgagor cannot be held responsible for the acts of others with whom he is not in collusion or who have no title to the property mortgaged by the mortgagor. The suit has in my judgment been properly dismissed. I dismiss this appeal with costs.

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 NAKCHEDI
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 v.
 RAM CHART-
 TAR RAI.

Appeal dismissed.

(1) I. L. R., 15 Mad., 304.