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be payable. It is needless to observe that that arrangement and the decree in appeal which was passed in accordance with it did not bind the present appellants. Subsequently, on the decree-holders proceeding to obtain execution by sale, these applicants again objected that interest on the principal amount and interest after the 2nd of January 1889 could not be included in the sum for which the property could be sold, so far as they were concerned. The Subordinate Judge dismissed their objection, and from that order of dismissal this appeal has been brought.

In our opinion sections 86, 88 and 89 are quite clear and leave no reason to doubt that the objection of these appellants was good in law. In coming to the above conclusion we have not overlooked the provisions of sections 209 and 222 of the Code of Civil Procedure. In our opinion those sections cannot affect the special provisions of the Transfer of Property Act. We construe the decree on this particular point, as it may be construed, as a lawful decree under section 88, and not as an illegal decree, as it would be if the contention of the decree-holders was correct, and we hold that the property cannot be sold in respect of any interest after the 2nd of January 1889, except such interest as was wrongly decreed on costs. We allow this appeal with costs.

Appeal decreed.

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December 17.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blair.

RAM LAI AND OTHERS (DECREE-HOLDERS) v. TULSA KUAR AND OTHERS
(JUDGMENT-DEBTORS).*

Act No. IV of 1882 (Transfer of Property Act), sections 87, 89, 92, 93—Redemption of a mortgage—Decree for redemption—Extension of time limited for payment of decretal amount—Execution of decree.

In the case of a decree for redemption or for foreclosure under the Transfer of Property Act, 1882, both of which decree stand in this respect upon the same footing, no extension of the time limited by the decree for payment of the decretal amount can be made except for good cause shown, whether the order under section 87, in a suit for foreclosure, or the order under section 93, in a suit for redemption, has been applied for or not. *Pooresh Nath Majumdar*

* First Appeal, No. 41 of 1896, from an order of Maulvi Muhammad Mazhar Husain, Subordinate Judge of Mulapuri, dated the 4th Septembar, 1895.

v. *Ramjodu Mojumdar* (1) dissented from. *Kanara Kurup v. Govinda Kurup* (2) distinguished.

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This was an appeal arising out of the dismissal of an application under section 93 of the Transfer of Property Act, 1882, that a certain mortgage might be declared to be foreclosed.

In 1869 one Tulsa Kuar mortgaged, by a deed of conditional sale, certain immovable property to Kirpa Ram and others. The deed provided that the property should be redeemed within three years and that, if it were not so redeemed, the mortgagees should get possession, and, after so obtaining possession, the profits were to be applied first in payment of the interest on the mortgage debt and then in reduction of the principal. The term of the mortgage was twelve years. In 1872 the mortgagees got a decree for possession which they subsequently executed. Upon this, one Raj Kuar brought a suit for pre-emption against the mortgagees, and on the 22nd of September 1874 obtained a decree conditioned on her paying the mortgage money and interest. Afterwards, on the 3rd of October 1874, Raj Kuar sub-mortgaged her right as mortgagee under the pre-emption decree to Ishri Prasad, Ram Lal and others for Rs. 7,500. The money so secured was deposited to satisfy the pre-emption decree and possession was obtained on the 6th of November 1874. Tulsa Kuar, the original mortgagor, executed another mortgage in favour of Raj Kuar for Rs. 1,500. Ishri Prasad, Ram Lal and others, the sub-mortgagees, then sued for the recovery of their mortgage debt and obtained a decree against Raj Kuar on the 28th of September 1888. After that Tulsa Kuar instituted a suit for redemption against Raj Kuar, to which, Ishri Prasad and others, the sub-mortgagees, were made parties. Tulsa Kuar obtained a decree for redemption on the 20th of April 1889 on the condition that Rs. 9,149 should be paid within six months, otherwise the mortgage to be foreclosed. This decree was confirmed by the High Court on the 28th of April 1891. Tulsa Kuar did not deposit the mortgage money within the time specified. Meanwhile Ishri Prasad and others executed

(1) I. L. R., 16 Cal., 246.

(2) I. L. R., 16 Mad., 214.

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their decree. They caused the rights of Raj Kuar as mortgagee to be sold and purchased them themselves on the 21st of September 1891. On the 20th of February 1893, Ishri Prasad, in execution of a decree of his own, brought to sale and purchased the mortgagor's rights of Tulsa Kuar, and, subsequently to that purchase, he deposited in court the mortgage money, according to the decree for redemption obtained by Tulsa Kuar in 1889, *minus* his one-third share, and prayed for execution of the decree for redemption in his favour. On the 19th of March 1894, Ram Lal and others, the remaining mortgagees, applied for an order absolute for foreclosure of the mortgage under section 93 of the Transfer of Property Act, 1882. This application was dismissed by the Subordinate Judge of Mainpuri. The applicants thereupon appealed to the High Court.

Mr. T. Conlan and Pandit Sundar Lal, for the appellants.

Pandit Moti Lal and Maulvi Ghulam Mujtaba, for the respondents.

EDGE, C. J., and BLAIR, J.—In 1869, Musummat Tulsa Kuar executed a compound kind of mortgage, which provided that, if the mortgage money was not paid within three years, the mortgage should be one by conditional sale and the mortgagees should have possession. The mortgage money was not paid within three years and the mortgagees obtained possession. The mortgagor brought a suit for redemption under the Transfer of Property Act, 1882, and on the 20th of April 1889 obtained a decree for redemption under section 92 of that Act. The decree fixed the 20th of October 1889 as the day on or before which payment was to be made, and, the mortgage being one by conditional sale, decreed, in the event of non-payment by the date fixed, that the mortgagor should be absolutely debarred of all right to redeem the property. As is usual in these cases, the amount was not paid on or before the 20th of October 1889, and no application by the mortgagor, or by any representative of the mortgagor's interest as mortgagor, was made under section 93 to the Court to postpone the day fixed by the decree under section 92 for payment until the

14th of March 1894, when one of the mortgagees, who in the meantime had acquired by purchase the mortgagor's interest, paid the mortgage money into Court. On the 19th of March 1894, the other mortgagees or their representatives applied for an order under section 93 of the Transfer of Property Act debaring the mortgagor, and all persons claiming through her, of all right to redeem the mortgaged property. That application of the 19th of March 1894 was dismissed, and from the order of dismissal this appeal has been brought.

It seems to have been assumed by the Court below that it was at liberty to do, without reference to the Transfer of Property Act, 1882, that which the Court of Chancery in England used to do in suits for foreclosure, namely, to extend the time within which the mortgage money might be paid; and the Court below further assumed that it had this power even in a case in which there was no cause shown for postponing the day for payment. The practice of the Court of Chancery in England in the case of a suit for redemption differed materially in these respects from its practice in the case of a suit for foreclosure. In the case of a suit for redemption, it does not appear to have been, except possibly in a very exceptional case, the practice of the Court of Chancery in England to extend the time within which the decreed redemption money might be paid. The cases showing what the practice of the Court of Chancery was are collected at pp. 1104 and 1106 of Coote on Mortgages, 5th edition.

Whatever may have been, or may now be, the practice in England in suits for redemption or foreclosure of a mortgage, what we are concerned with in India is the law on this subject which the Indian Legislature, being a competent body to legislate in that respect, has enacted shall be followed by Courts in this country. That law is provided for us in the Transfer of Property Act, 1882 (Act No. IV of 1882). So far as the power of a Court to extend the time in a suit for redemption or in a suit for foreclosure in India is concerned, the power and jurisdiction of the Court are limited, in the case of foreclosure, by section 87,

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and, in the case of redemption, by section 93 of the Transfer of Property Act, and in that respect the two suits are placed on exactly the same basis: in neither case has a Court, which is bound to obey the law of the Transfer of Property Act, 1882, power to extend the time for payment except on good cause shown.

Now, in this case, there was no good or other cause shown why the Court should postpone the date fixed by the decree which was passed under section 92 of the Act for payment to the defendant. The Courts in India, where the Indian Legislature has made express provisions on the subject, have no power to arrogate to themselves the jurisdiction which was exercised by the High Court of Chancery in England. In our opinion the application of the mortgagees, respondents here, of the 19th of March 1894, for an order under section 93 debarring the mortgagor, and any one claiming under her, of all right to redeem should have been granted.

It has been contended that—inasmuch as section 93 of the Transfer of Property Act, 1882, enacts that, “on the passing of any order under this section, the plaintiff’s right to redeem, and the security, shall, as regards the property affected by the order, both be extinguished; provided that the Court may, upon good cause shown and upon such terms, if any, as it thinks fit, from time to time, postpone the day fixed under section 92 for payment to the defendant,”—the mortgagor or the purchaser of the equity of redemption had a right, until such order was made under section 93, to come into Court at any time and make payment of the redemption money, and to do so without even having obtained an order on good cause shown postponing the day for payment. Now, if there was nothing else than the proviso to section 93 to show that that contention was unsound, the proviso would meet the argument. But earlier in the section we find in the second paragraph, which is the paragraph which deals with what is to happen on default of payment, the words “if such payment is not so made.” These words, in our opinion, must refer to a payment made in accordance with the decree passed under section 92, and indicate

that, unless the Court makes an order under the proviso to section 93, there is no right in the mortgagor in a suit for redemption to make the payment after the date fixed in the decree has passed. The order under section 93 debarring the mortgagor of all right to redeem would be, when drawn up, a document of title in the hands of the mortgagees, as it would show that the right to redeem allowed by the decree under section 92 had lapsed and that no extension had been granted of the time within which payment might be made. The opening words of the second paragraph of section 87, which relates to a suit for foreclosure, are the same as the opening words of the second paragraph of section 93 which relates to redemption. In our opinion, no matter what the practice of the Court of Chancery in England may have been, the intention of the Indian Legislature, as expressed by it in the Transfer of Property Act, 1882, was that there should be no extension of time, except for good cause shown, whether the order under section 87 in a suit for foreclosure, or the order under section 93 in a suit for redemption, was applied for or not.

We cannot agree with the decision of the High Court at Calcutta in *Pooresh Nath Mojumdar v. Ramjodu Mojumdar* (1), the provisions of the Transfer of Property Act being in our opinion clear in this matter. As to the case of *Kanara Kurup v. Govinda Kurup* (2), it is to be observed that there was no decree in that case, under section 92, as to what should happen in case payment was not made within the time fixed.

We allow this appeal, and direct that an order be drawn up under section 93 of the Transfer of Property Act debarring the mortgagor, and all those claiming under her, of all right to redeem the mortgaged property. The appellants will have the costs of this appeal and of the application in the Court below. Of course, the persons who paid the mortgage money into Court will be entitled to get it out, their application being necessarily dismissed.

Appeal decreed.

(1) I. L. R., 16 Calc., 246.

(2) I. L. R., 16 Mad., 214.

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December 18.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blair.

KASHI PRASAD (JUDGMENT-DEBTOR) v. SHEO SAHAI (DECREE-HOLDER). *
Act No. IV of 1882 (Transfer of Property Act) sections 88, 89, 91—Execution of decree—Decree for sale—Agreement for payment by instalments with enhanced interest—Civil Procedure Code, section 257A.

A decree for sale under section 88 of the Transfer of Property Act, 1882, can only be executed for the amount decreed or found on an account being taken to be due, and the order for sale cannot, except with regard to any additional costs which may be provided for by an order under section 91, extend in any way the liability of the judgment-debtor or his property under the decree. *Sita Ram v. Dasrath Das* (1) distinguished.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Jogindro Nath Chaudhri*, for the appellant.

Mr. *Roshan Lal* for the respondent.

EDGE, C. J., and BLAIR, J.—The respondent on the 7th of May, 1891, obtained a decree for sale under section 88 of the Transfer of Property Act, 1882, against the appellant here. Subsequently to the making of that decree, and after expiration of the time for payment limited by the decree, the respondent obtained an order under section 89 of that Act. Later still, after the making of that order, the parties agreed that the appellant here might pay by instalments, part of the consideration for that agreement being an increase by about Rs. 2,000 of the decretal debt and certain provisions as to the payment of additional interest. The Court sanctioned the agreement under section 257A. of the Code of Civil Procedure. The respondent now seeks to have execution of the decree and the agreement, or rather to have execution for the amounts mentioned in the agreement and for the additional interest mentioned in the agreement. The Court below granted the application, and from that order this appeal has been brought.

Mr. *Roshan Lal*, for the respondent, has contended that an agreement of this kind which has been sanctioned by the Court

* First Appeal, No. 130 of 1896, from a decree of Pandit Bansi Dhar, Subordinate Judge of Gorakhpur, dated the 17th February 1896.

can be enforced by execution as if it were a decree, and in fact that it varies the decree. He has relied on *Ameer-un-nissa Khatoon v. Meer Mahomed Hossein* (2) and on *Sita Ram v. Dasrath Das* (1). The case in Calcutta decided nothing of the kind; in fact it left the question open to be decided subsequently whether the decree-holder could enforce his decree for anything not specifically decreed. The Full Bench case in this Court certainly supports to some extent Mr. *Roshan Lal's* argument. It decided that, where there was a *sulahnamah* relating to a decree which had been sanctioned under section 257A. of the Code of Civil Procedure, the decree might be executed in accordance with its provisions. In that case the *sulahnamah* imposed an additional burden on the judgment-debtor not imposed by the decree. We doubt if that view of the law would be considered a good one at the present day. Fortunately, it does not bind us in this case, for, although the decree in that case was one in enforcement of a hypothecation by sale, the decree was made in 1881, and consequently was not a decree for sale under the Transfer of Property Act, 1882.

Section 210 of the Code of Civil Procedure enables a Court after passing a decree for the payment of money, on the application of the judgment-debtor and with the consent of the decree-holder, to order the amount decreed to be paid by instalments on such terms, as to the payment of interest, attachment of the property or otherwise, as the Court thinks fit. Such an application must be made within six months of the date of the decree. By the same section it is enacted that, "save as is provided by that section and section 206, no decree shall be altered at the request of the parties". That section does not apply to a decree for sale, which is not a decree for money, and which can only be made under the Transfer of Property Act, 1882, since that Act came into force. It is obvious that, where a decree for sale is made under section 88 of the Transfer of Property Act, no subsequent agreement between the parties can increase the amount for which the property is to be sold in case default of payment is made. Under section 88 the decree must direct that

(1) 2 C. L. R. 143.

(2) I. L. R., 5 All. 492.

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the proceeds of the sale, after defraying thereout the expenses of the sale, shall be paid into Court "and applied in payment of what is so found due to the plaintiff, and that the balance, if any, be paid to the defendant or other persons entitled to receive the same." The words "what is found due to the plaintiff" refer to what is found due in the account or by the declaration of the Court mentioned in section 86. The order under section 89 can only be an order that the property, or a sufficient part thereof, be sold and that the proceeds of the sale be dealt with as is mentioned in section 88. There is no provision in section 88 or section 89 such as those contained in the proviso to section 87, which is the section relating to suits for foreclosure, or in section 93, which is the section relating to suits for redemption. We can only come to the conclusion that a decree for sale under section 88 of the Transfer of Property Act can only be executed as provided by that Act, that is, for the amount decreed or found in account to be due, and that the order for sale cannot, except with regard to any additional costs which may be provided for by section 94, extend in any way the liability of the judgment-debtor or his property under the decree. All that this decree-holder is entitled to under the order under section 89 is to have his decree executed for the amount decreed and the expenses of the sale and for any additional costs which may be incurred under section 94. He cannot have execution of the agreement by which time was given. As the application was one for execution of the agreement, we allow this appeal and dismiss the application with costs.

*Appeal decreed.**Before Mr. Justice Aikman.*

CHIDDO (PLAINTIFF) v. PIARI LAL AND ANOTHER (DEFENDANTS).*

Civil Procedure Code, section 316—Sale certificate—Title of auction purchaser who has not obtained a sale certificate—Execution of decree.

Although the auction purchaser at a sale held in execution of a decree may not obtain a full title until a certificate has been granted, this must not

* Second Appeal, No. 107 of 1896, from a decree of Maulvi Muhammad Mazhar Hasain Khan, Subordinate Judge of Mainpuri, dated the 3rd December 1894, reversing a decree of Babu Achal Behari, Munsif of Etah, dated the 25th September 1894.

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