

The purchaser is a stranger, and for some 11 years has been in undisturbed possession of the share. The Court below in a somewhat vague manner has apparently treated this proceeding, not as a suit but as an application under section 244 of the Code of Civil Procedure, and following therein a decision of this Court in *Jhanman Lal v. Kewal Ram* (1), in which a Bench of this Court approved of the ruling in the case *Biru Mahata v. Shyama Churn Khawas* (2), decreed the claim of the plaintiffs. Mr. Gokul Prasad argues for the appellant that this proceeding having been treated by the Court below as a proceeding under section 244, the application of the plaintiff is barred by the operation of art. 178 of sch. ii of the Indian Limitation Act. If that article is applicable, it is clear that the three years' limitation has long expired. Mr. Muftaba for the respondents has suggested that no article of limitation is applicable to such an application as this. The case which he has cited to me is altogether of a different kind, and I see no reason to doubt the propriety of the application of art. 178. For this reason I allow the appeal, set aside the decrees of the Courts below, and dismiss the plaintiff's suit with costs.

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LALMAN
DAS
v.
JAGAN
NATH
SINGH.

Appeal decreed.

Before Mr. Justice Burkitt and Mr. Justice Henderson.

KAUNSILLA (DEFENDANT) v. CHANDAR SEN (PLAINTIFF).*

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June 7.

Execution of decree—Sale in execution—Title of auction-purchaser—Purchaser not bound to inquire into the validity of the order under which the sale takes place.

Where under a decree upon a mortgage the sale of certain property is ordered, and such property is sold at auction in pursuance of such order, and the sale is confirmed, the auction-purchaser takes a good title, even though the decree was one which the Court ought not to have made. The purchaser at a sale under a decree is under no obligation to look behind the decree to see whether the decree has been rightly made. *Matadin Kasodhan v. Kazim Husain* (3) distinguished. *Rewa Mahton v. Ram Kishen Singh* (4) and *Mukhoda Dassi v. Gopal Chunder Dutta* (5) referred to.

* Second Appeal No. 29 of 1898 from a decree of Babu Madho Das, Subordinate Judge of Bareilly, dated the 10th December 1897, reversing a decree of Pandit Bishambar Nath, Munsif of Aonla, Faridpur, dated the 19th April 1897.

(1) Weekly Notes, 1899, p. 219.

(3) (1891) I. L. R., 13 All., 432.

(2) (1895) I. L. R., 22 Calc., 433.

(4) (1886) I. L. R., 14 Calc., 18.

(5) (1899) I. L. R., 23 Calc., 734.

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

Pandit Sundar Lal for the appellant.

Pandit Moti Lal (for whom *Maulvi Ghulam Mujtaba*) for the respondent.

BURKITT and HENDERSON, JJ.—On the 19th June 1872, one Jagannath mortgaged $11\frac{1}{4}$ biswas in a particular mahal to Tulshi Ram. This mortgage was a simple mortgage, but it appears that subsequently the mortgagee was let into possession (it is not shown how), and from that time the mortgage was treated as if it had been a usufructuary mortgage. Jagannath died leaving three sons, Raghunath Das, Narain Das and Mulchand, who may be described as Mulchand No. 1.

On the 29th October 1881, Raghunath and Narain Das sold their two-third shares in the $11\frac{1}{4}$ biswas (or $7\frac{1}{2}$ biswas) to Tulshi Ram, who thus became the owner of the $7\frac{1}{2}$ biswas, and continued to be the mortgagee of the $3\frac{3}{4}$ biswas of Mulchand No. 1. The share of Mulchand No. 1 remained unaffected. Tulshi Ram, who owned another 5 biswas in the same mahal, died, leaving a son Mulchand No. 2. Mulchand No. 2, who was in possession of the $11\frac{1}{4}$ biswas and his 5 biswas, on the 3rd January 1887, executed a mortgage purporting, as full owner, to mortgage the entire $16\frac{1}{4}$ biswas to Musammam Kaunsilla and Bishan Lal. The mortgagees, Musammam Kaunsilla and Bishan Lal, brought a suit upon their mortgage against Mulchand No. 2 only, and obtained a decree for sale, and under that decree the property was sold on 20th June 1895, and purchased by Musammam Kaunsilla for Rs. 7,000 odd. This sale was confirmed, and she obtained possession on the 24th September 1895.

On the 22nd February 1897, the plaintiff-respondent Chandar Sen, who had previously, on the 24th May 1897, purchased Mulchand No. 1's $3\frac{3}{4}$ biswas, sued to eject the defendant Musammam Kaunsilla. He was given an opportunity of redeeming, but he declined to accept it. The lower Appellate Court has given the plaintiff a decree for his claim as made.

It has been contended that, having regard to the Full Bench decision in the case of *Matadin Kasodhan v. Kazim Husain* (1),

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Kaunsilla took nothing under her purchase. That case has no reference to a sale which has actually taken place and been confirmed, as in the case before us. It merely deals with the right of the mortgagee who has not made prior or subsequent mortgagees parties to his suit to bring the property to sale. That case, in our opinion, therefore, has no application to the circumstances of the present case. It has been contended that Kaunsilla and Bishan Chand being subsequent mortgagees in respect to the one-third share of Mulchand No. 1 were not entitled to bring the mortgaged property to sale under the decree which they obtained in their suit. But, as a matter of fact, the property has been sold under that decree, and the sale has been confirmed and possession given. It is not necessary, as has been held by the Privy Council, for an intending purchaser at a sale under a decree to go behind the decree, to see whether the decree has been rightly made. In *Rewa Mahton v. Ram Kishen Singh* (1) their Lordships of the Privy Council say :—“To hold that a purchaser at a sale in execution is bound to inquire into such matters would throw a great impediment in the way of purchasers under executions. If the Court has jurisdiction, a purchaser is no more bound to inquire into the correctness of an order for execution than he is as to the correctness of the judgment upon which the execution issues.” There seems to be no real distinction between a sale which takes place under a decree which directs a sale, as in the case of a mortgage, and a sale in execution held under an order made after a decree for money. See *Mukhoda Dasi v. Gopal Chander Dutta* (2). We have also been referred to two cases, one *Hargu Lal Singh v. Gobind Rai* (3) and the other an unreported case in Second Appeal No. 637 of 1897 recently decided by a Bench of this Court. Neither of these cases deals with the case of a sale which has actually taken place, and they are therefore not in point. The plaintiff in this case is the representative of the mortgagor, and we are unable to see how, under the circumstances of this case, he can be entitled to get possession without redeeming an admittedly existing lien on the property held by the defendants.

(1) (1886) I. L. R., 14 Calc., 18. (2) (1899) I. L. R., 20 Calc., 734.

at p. 737.

(3) (1897) I. L. R., 10 All., 541.

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We therefore allow the appeal, set aside the judgment of the lower appellate Court and restore that of the Court of first instance, dismissing the claim with costs in all Courts.*

Appeal decreed.

1900
June 7.

Before Mr. Justice Burditt and Mr. Justice Henderson.

MOTI RAM AND ANOTHER (DEFENDANTS) v. KUNDAN LAL AND OTHERS
(PLAINTIFFS).*

Civil Procedure Code, sections 372, 588—Assignment pending suit—Application by Assignees to be allowed to appeal against the decree—Order rejecting application—Appeal.

A defendant, pending the suit, made an assignment of his interest therein. No application was made by the assignees or the assignor to have the assignees brought on the record, and the suit was decided *ex parte* to the detriment of the assignees. The assignees filed a memorandum of appeal claiming that they were entitled to file an appeal under the circumstances set forth in their memorandum. The Court, apparently treating this memorandum as an application under section 372 of the Code of Civil Procedure, dismissed it. *Held* that an appeal would lie from this order of dismissal as from a decree. *Inda Mati v. Gaya Prasad* (1) followed.

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

Pandit *Moti Lal* and Babu *Durga Charan Banerji*, for the appellants.

Babu *Jogindro Nath Chaudhri* (for whom *Munshi Gulzari Lal*) for the respondent.

BURKITT and HENDERSON, JJ.—This is an appeal from a decree of the District Judge of Meerut, which in words directs the appeal before him to be dismissed. The case was one in which in a pending suit the present appellants purchased the interest of one Dalip; they made this purchase on the 5th July 1897. No application was made by the assignees or assignor to have the assignees brought on the record, and the suit was decided *ex parte* on the 13th July. The decree given in that suit was injurious to the present appellants, in that it debarred them from redeeming the mortgage. Thereupon the present appellants put in a memorandum of appeal before the Judge, and in that

* Second Appeal No. 966 of 1897 from a decree of H. G. Pearse, Esq., District Judge of Meerut, dated 13th September 1897, confirming a decree of Babu Jai Lal, Officiating Subordinate Judge of Meerut, dated the 13th July 1897.

(1) (1896) I. L. R., 19 All., 142.