

the Registration Act. A decision was referred to in the course of the argument, *Ram Coomar Sen v. Khoda Newaz* (1), but we find that that decision is entirely based upon a Privy Council judgment *Makhun Lall Pandey v. Koondun Lall* (2), and the Privy Council decision does not support the contention put forward in this case. There the document which was in question was registered by an officer who had jurisdiction to register it, but in this case the document has been registered by an officer who had no jurisdiction to register it. That being so, the observations of their Lordships of the Judicial Committee upon which the decision proceeds are not applicable to this case. We dismiss these appeals with costs.

J. V. W.

*Appeals dismissed.**Before Mr Justice Wilson and Mr. Justice Beverley.*

BAIJ-NATH PERSHAD NARAIN SINGH AND ANOTHER (DEFENDANTS)
 APPELLANTS *v.* MOHESWARI PERSHAD NARAIN SINGH AND
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Mortgage—Foreclosure—Regulation XVII of 1806, s. 8—Provision as to the year of grace—Extension of time by mutual agreement—Transfer of Property Act, s. 2, cl. (c).

The year of grace allowed by s. 8, Regulation XVII of 1806 is a matter of procedure, which it was open to the parties to extend by mutual agreement without prejudice to the proceedings already had under the section, and upon the expiration of such extended period the mortgagee acquired an immediate right to have a decree declaring the property to be his absolutely.

The right so acquired by the mortgagee while the Regulation was in force is a right which falls within the meaning of cl. (c) s. 2 of the Transfer of Property Act.

Proceedings under s. 8 had come to a close by the expiration of the stipulated period of extension while the Regulation was still in force, and the mortgagee brought his suit for possession, in pursuance thereof after the passing of the Transfer of Property Act. *Held*, that the mortgagee was entitled to a decree such as he would have had if the Regulation had been still in force.

RANJIT NARAIN SINGH by a deed of *baibilwafa*, or conditional sale, dated the 31st January 1879, conveyed his shares in certain

* Appeal from Original Decree No. 491 of 1885, against the decree of Moulvie Mahomed Nurul Hossein, Khan Bahadur, Subordinate Judge of Sarun, dated the 29th of June 1885.

(1). 7 C. L. R., 223.

(2) 15 B. L. R., 228.

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mouzahs to Moheswari Pershad Narain Singh and another for a consideration of Rs. 5,000. The debt was stipulated to be repaid in the month of August following. After the expiration of the term the mortgagees took proceedings under s. 8, Regulation XVII of 1806, and notice of foreclosure was issued on the 20th January 1880. As the year of grace was drawing to a close, Ranjit Narain Singh obtained an extension of time through the Court with the consent of the mortgagees. Ranjit Narain being still unable to pay the debt, the mortgagees, by a petition of the 8th September 1881, made with the consent and under the signature of Ranjit Narain, granted the last extension of time till the 15th Aughran 1289 F.S. (21st November 1881). On the expiration of this period the debt still remained unpaid, but no further steps appear to have been taken until the 19th July 1884, when Moheswari Narain Pershad and another brought a suit for possession, and "to enforce the foreclosure" against the heirs of Ranjit Narain who were then in possession of the mortgaged property. The Court of first instance found the facts in favor of the plaintiffs and gave them a decree.

On appeal to the High Court it was contended (1) that the decree of the lower Court should have been according to s. 86 of the Transfer of Property Act; (2) that even if the case came within Regulation XVII of 1806, there had not been sufficient compliance with its provisions.

The *Advocate-General* (with him Mr. *O'Kinealy*, Baboo *Mohesh Chunder Chowdhry*, and Munshi *Mohamed Yusuf*) for the appellants.

Mr. *C. Gregory* for the respondents.

The Court (WILSON and BEVERLEY, JJ.) delivered the following judgment:—

This was a suit brought upon a mortgage made in the old form by conditional sale. The time for paying the mortgage money expired, and the notice prescribed by s. 8 of Regulation XVII of 1806 was issued and served. The consequence was that the mortgagors' interest in the property became liable to be barred, and the mortgagees' title was in process of becoming absolute if the money was not paid within the year of grace prescribed by

the Statute. Before the year of grace had expired, the period for payment was enlarged by agreement between the parties, and several further extensions of time took place. Ultimately the final extension expired while the Regulation was in full force, and before the passing of the Transfer of Property Act. This suit was then brought by the mortgagee claiming to have his title declared to have accrued to him absolutely by reason of default in payment within the time to which the period of grace had been extended, and asking for a decree such as he would have had if the Regulation had been still in force. The lower Court gave the plaintiff a decree accordingly, and against that decree the present appeal has been brought.

Two objections have been argued before us. First it has been said that the title which the mortgagee acquires under the Regulation is a statutory title, and that in order to perfect that title everything must be carried out in strict accordance with the Regulation; and, therefore, it is said, because there was an extension of time beyond the statutory year of grace, if the mortgagee intended to rely on such a title as he could acquire under the Regulation, he was bound to begin *de novo* with a new notice under the Regulation. It appears to us that that is not so. The character of the arrangement for the extension of time appears from the petitions printed at pp. 52, 54 and 55 of the Paper Book. These are petitions which show that the extended period had been conceded by the mortgagee; that the extensions were accepted by the mortgagor and they close with words to this effect: "In the event of your petitioner not paying the consideration money with interest and costs" (by such and such a date) "the equity of redemption, in respect to the property sold, shall be barred in favor of the purchasers." In other words they are petitions which show that the extension of time was obtained by the mortgagor on the express terms that the bar to his title in case of non-payment should be as effectual as if the time had not been extended. That is a matter of procedure as to which the parties were at liberty to make such agreement as they thought fit. It appears to us analogous to the case of a man whose property is liable to be sold under an attachment, and who obtains a postponement

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of the sale on the terms that no fresh sale proclamation shall be necessary, a very common form of agreement and one to which the Courts have often given effect. It appears to us therefore, that the objection based upon the extension of time is not a sound one. The subject has been considered in some of the decided cases. In *Brijo Mohun Sutttypetty v. Radha Mohun Dey* (1), a similar question came before Sir Richard Couch, C.J. and Glover, J., and they held that the right of the mortgagee was not affected by his having given time; but, as pointed out by the Advocate-General, that case is not expressly in point because it would seem that in that case, before the extended time was given, the year of grace had expired, which is not the case here. Then there are two cases in which the point has arisen, but in which it was the mortgagor who was compelled to rely upon the extended time. There is one case *Dabee Rawoot v. Heeramun Mohatoon* (2) decided by Sir Barnes Peacock, C.J. and Loch, J., in which they held that the period of time having been enlarged by consent, the mortgagor was safe in paying his money into Court within the enlarged time. A similar decision was passed in *Zulem Roy v. Deb Shahee* (3) decided by Bayley and Kemp, JJ. These cases tend to show that it is within the power of the parties to bargain as they choose in the way of enlargement of time in cases under the Regulation, and that such extension of time is not fatal to the whole proceeding.

The next question is one of more general importance. It was contended that in this case the suit, having been brought after the passing of the Transfer of Property Act, was governed by that Act, and that the form of the decree to be given in the case ought to be the form of foreclosure decree prescribed by that Act, in ss. 86 and 87. Several cases were referred to in support of that contention. The first of these in point of date is *Ganga Sahai v. Kishen Sahai* (4). In that case the mortgage was of the kind governed by Regulation XVII of 1806, and it was executed while that Regulation was in force. Subsequently to the passing of the Transfer of Property Act, a suit of the nature prescribed by that Act was brought without any

(1) 20 W. R., 176.

(3) Marsh., 167.

(2) 8 W. R., 223.

(4) I. L. R., 6 All.; 262.

previous proceedings having been taken under the Regulation, and the question before the Full Bench of the Allahabad Court was whether such a suit would lie. The majority of the Judges held that the suit lay; that the proceedings prescribed in the Regulation were matter of procedure, and not within the saving clause of the repealing section in the Transfer of Property Act, not falling within the words, "right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability." The next case was one in this Court, *Pergash Koer v. Mahabir Pershad Narain Singh* (1). There the mortgage was again a mortgage governed by the Regulation, and executed while the Regulation was in force. Proceedings taken under the Regulation would have resulted, if these proceedings had been good as against all parties, in the acquisition of a complete title by the mortgagee. The suit was then brought after the passing of the Transfer of Property Act. It was found, however, on the trial of the case, that as against the defendant who was sued in the case, the proceedings purporting to be under the Regulation were invalid because he had not been made a party, and, accordingly, the first Court dismissed the suit. The question before the Appellate Court was whether in that state of things the plaintiff was not nevertheless entitled to a decree in accordance with the provisions of the Transfer of Property Act. There, as in the Allahabad case, the Judges of this Court were dealing with a case in which no valid and effectual proceedings had taken place as between the parties to the suit under the Regulation; and it was held that the procedure under the Transfer of Property Act ought to be applied, and a decree in accordance with that Act granted, subject to this, that a year of grace was given to redeem instead of the different period contemplated by the Transfer of Property Act. The third case is a decision of a Full Bench of this Court, *Bhobo Sundari Debi v. Rakhal Chunder Bose* (2). There again the mortgage was made under the Regulation. No proceedings had been taken under the Regulation, but after the passing of the Transfer of Property Act a suit was brought. The question which the Full Bench had to consider was, whether such a suit

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(1) I. L. R., 11 Calc., 582.

(2) I. L. R., 12 Calc., 583.

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would lie, that is to say, whether in the case of a mortgage, governed at the time of its making by the Regulation, the mortgagee may sue in the manner provided by the Transfer of Property Act; or whether, notwithstanding the passing of the Transfer of Property Act, which repealed the Regulation, the mortgagee was, by virtue of the saving clause, compelled to proceed under the Regulation as if the Transfer of Property Act had not been passed. The Court held that he was not, the matter being one of procedure.

All these cases differ materially from the present for this reason. In the present case, before the Transfer of Property Act passed, proceedings had been taken under the Regulation. They were valid and effectual proceedings, and they had arrived at a close; that is to say, the period of grace had expired. Now, when that period of grace expired, the Regulation being still in force, what were the rights of the parties? The mortgagee acquired an immediate right to have a decree declaring the property to be his absolutely. It did not become his absolutely without a decree, but his right to such a decree immediately accrued. On the other hand the mortgagor, the moment the period of grace expired, ceased to have any right of redemption. These rights and liabilities appear to us to differ essentially from the matters, which, in the other cases, were held to be mere matters of procedure. It is impossible to say, in our judgment, that anything can be described as a "right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability," if these words do not apply to an actually existing right to an immediate decree declaring the property to be absolutely the property of the mortgagee, and, on the other hand, the entire loss of any right to redeem the property.

We think, therefore, that the second ground of appeal fails as well as the first, and this appeal must be dismissed with costs.

K. M. C.

Appeal dismissed.