

shown that there was either a legal necessity for the alienation, or at least the grantee was led, on reasonable grounds, to believe that there was. There is nothing in their Lordships' judgment to suggest that there is any obligation on the lender in such a case to satisfy himself that the entire money which he is advancing is actually required for a legal necessity, provided he acts *bond fide* in the matter, and reasonably believes that the money is required to meet a legal necessity. This being our view the appeal fails and is dismissed with costs.

Appeal dismissed.

1902

GHANSHAM
SINGH
v
BADIYA
LAL.

1902

July 9.

Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Banerji.
PARMANAND (DEFENDANT) v. DAULAT RAM AND OTHERS (PLAINTIFFS).
Act No. IV of 1882 (Transfer of Property Act), sections 67, 85, 99
—Mortgage—Sale under a decree of equity of redemption—Rights of purchaser, the decree having become final.

On the 22nd of March, 1881, one Nathu Ram mortgaged certain property with possession. On the 9th of May, 1881, the mortgagees leased the mortgaged property to Nathu Ram, who, as security for the rent due from him, further pledged his equity of redemption. The original mortgagees died. The rent due under the lease fell into arrears; and the successor in title of the mortgagees instituted a suit against the mortgagor to recover the amount due to him for arrears of rent by sale of the equity of redemption of the property. On the 27th of November, 1889, a decree for sale was passed, and on the 31st of March, 1890, an appeal against the decree for sale was rejected. The property was accordingly sold by virtue of the decree for sale, and was purchased by the successor in title of the mortgagees on the 20th of April, 1891. The sons of Nathu Ram thereupon brought a suit, claiming proprietary possession of the property on the ground that the sale of the equity of redemption was illegal and void, and conveyed nothing to the purchaser.

Held that the sale having been the outcome of a suit under section 67 of the Transfer of Property Act, 1882, did not offend against section 99 of the Act, and that although, according to law as laid down by the High Court, the sale of an equity of redemption was not contemplated by the Transfer of Property Act, yet, inasmuch as the sale had taken place under a decree which had become final, it could not at that time be upset. *Matadin Kasodhan v. Kazim Husain* (1) and *Tara Chand v. Indad Husain* (2) referred to.

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

* First Appeal No. 267 of 1901 from a decree of Maulvi Ahmad Ali Khan, Subordinate Judge of Aligarh, dated the 30th of June 1900.

(1) (1891) I. L. R., 13 All., 432. (2) (1896) I. L. R., 18 All., 325.

1902

PARMANAND
v.
DAULAT
RAM.

Babu *Jogindro Nath Chaudhri* and *Pandit Sundar Lal*,
for the appellant.

Pandit Baldeo Ram, for the respondents.

STANLEY, C.J. and BANERJI, J.—The plaintiffs, respondents, who are the sons of one Nathu Ram, brought this suit for proprietary possession of $7\frac{1}{2}$ shares out of 10 biswas in mauza Nagla Sada under the following circumstances:—On the 22nd of March, 1881, Nathu Ram mortgaged with possession $7\frac{1}{2}$ shares to the predecessors in title of Parmanand, the defendant appellant, to recover a sum of Rs. 4,600 and interest thereon, and on the 9th of May, 1881, the same parties granted a lease of the same property to Nathu Ram. Nathu Ram, as security for the rent payable under the lease, mortgaged the property to the lessors. The predecessors in title of the defendant appellant died; rent fell into arrears under the lease, and the defendant appellant instituted a suit against Nathu Ram to recover the amount due to him for arrears of rent by sale of the equity of redemption of the property. On the 27th of November, 1889, a decree for sale was passed, and on the 31st of March, 1890, an appeal against the decree for sale was rejected. The property was accordingly sold by virtue of the decree for sale, and was purchased by Parmanand on the 20th of April, 1891. The plaintiffs, who are the sons of Nathu Ram, thereupon brought the present suit. Their case is, that the sale made under the decree of the 27th of November, 1889, was illegal and void, and they claim proprietary possession of the property in dispute. They did not offer to redeem the mortgages of the 22nd of March, 1881 and the 9th of May, 1881.

The main defence of the defendant was that the plaintiff was not competent to sue for possession of the property, and that of the property only $1\frac{1}{2}$ shares were ancestral property, and that the remaining six shares were the self-acquired property of Nathu Ram. The Subordinate Judge held in favour of the plaintiff's contention, that the sale was invalid for two reasons—first, that it was a sale of the equity of redemption and not of the mortgaged property; and secondly, that it was contrary to the provisions of section 99 of the Transfer of Property Act, and so was invalid. He held that the sale to the defendant passed

nothing to him, and that the plaintiffs could sue for possession of their shares. In the course of his judgment the learned Subordinate Judge says :—“ I admit that the plaintiffs cannot sue for actual possession so long as the usufructuary possession subsists. The defendant as usufructuary mortgagee is entitled to continue in possession as such mortgagee until that mortgage is redeemed. The plaintiffs cannot, therefore, obtain a decree for actual possession ; but there is no reason why they should not obtain a decree for proprietary possession subject to the defendant’s mortgage.” He held in accordance with the contention of the defendant that of the $7\frac{1}{2}$ shares, only $1\frac{1}{2}$ shares were ancestral property of the family, and such being the case, he gave the plaintiffs a decree for possession to the extent of three-fourths of $1\frac{1}{2}$ shares.

From this decree there has been an appeal, and also a cross-appeal No. 8 of 1901. In the cross-appeal the plaintiffs claim, instead of the three-fourths of $1\frac{1}{2}$ shares, the entire $7\frac{1}{2}$ shares. The grounds of appeal in the present case are, first, that the sale was not void under section 99 of the Transfer of Property Act ; secondly, that the sale was binding on the parties to the decree, and passed a good title to the purchaser ; thirdly, that the sale was a sale of property, and even if it were a sale of the equity of redemption only, it was not void in law ; and fourthly, that there was no proof that the appellant had notice of the existence of any interest of the plaintiff in the property, and that the sale in execution of the decree was not in contravention of section 85 of the Transfer of Property Act.

As regards the first ground of appeal, namely, that the sale was not in contravention of the provisions of section 99 of the Transfer of Property Act, it appears to us that the contention advanced on behalf of the appellant must prevail. Section 99 provides that a mortgagee who, in execution of a decree for the satisfaction of any claim, attaches the mortgaged property, shall not be entitled to bring such property to sale otherwise than by instituting a suit under section 67. In this case the appellant did institute a suit under the provisions of section 67 of the Transfer of Property Act for sale of the property mortgaged to him by the deed of the 9th of May, 1881, and obtained a decree in accordance with section 88 of the same Act. We, therefore,

1902

PARMANAND

v.
DAULAT
RAM.

1902

PARMANAND
v.
DAULAT
RAM.

think that there was no violation of the provisions of section 99 in the course which the appellant adopted: The cases which were relied upon by the learned vakil for the respondent in support of his contention are all cases in which money decrees only had been obtained, and not decrees as in the present case under section 67 of the Transfer of Property Act.

The next ground of appeal with which we shall deal is, that the sale was a sale of the property, and that even if it were a sale of the equity of redemption only, it was not void in law. According to the ruling of a majority of a Full Bench of this Court by which we are bound, whatever may be our opinion as to the correctness of it, an equity of redemption cannot be sold. This was the case of *Matadin Kasodhan v. Kazim Husain* (1). In view of this decision it appears to us that the sale which was held in this case was not a valid sale. However, the Court in the case before us entertained the suit for sale of the equity of redemption, passed a decree for sale of the equity of redemption, and sold the equity of redemption. There was no appeal against the decree, and the decree for sale must now be treated as valid and binding on the parties to the suit. This was so decided in the case of *Tara Chand v. Imdad Husain* (2). The sale was, therefore, binding on Nathu Ram, the father of the plaintiffs respondents. Can the sons now impeach it? There is no suggestion that the debt in respect of which the mortgage was granted was tainted with immorality. Nathu Ram himself could have sold the property, including the interests of his sons in it, to the appellant, and the plaintiffs, respondents, could not have impeached the transaction. The Court has only done what Nathu Ram himself could have done; and under such circumstances it appears to us that it would be most inequitable now to allow the plaintiffs, respondents, to impugn the transaction. In disposing of this ground of appeal we have dealt with the second as well as the third ground of appeal.

It only remains to consider the last ground of appeal which has been discussed before us, *viz.* the allegation that the sale of the property was not in contravention of the provisions of section 85 of the Transfer of Property Act. This question was not

(1) (1891) I. L. R., 18 All., 432.

(2) (1896) I. L. R., 18 All., 325.

determined by the lower Court, but it appears that the defendant appellant was not proved to have had any notice of the interest of the plaintiffs, respondents, in the property. On the contrary, the evidence, so far as it goes, goes to show that some inquiry was made by or on behalf of the appellant as to interested parties, and that he was unable to ascertain that there was any one interested in the property at the time of suit other than Nathu Ram. For these reasons we are of opinion that the appellant has established his case, and we accordingly allow the appeal, set aside the decree of the Court below, and dismiss the plaintiffs' suit with costs in both Courts.

1902

PARMANAND
v.
DAULAT
RAM.

Appeal decreed.

*Before Sir John Stanley, Knight, Chief Justice and
Mr. Justice Banerji.*

1902
July 10.

HINGU LAL (PLAINTIFF) v. BALDEO RAM AND OTHERS (DEFENDANTS).*

Civil Procedure Code, sections 43, 44—Cause of action—Misjoinder of causes of action—Omission to claim all the reliefs to which plaintiff is entitled to on the cause of action.

One *R D* brought a suit against two persons *M* and *G*, claiming to recover certain cash and ornaments belonging to one Sahai, deceased. To that suit *B R* and *B*, who had previously brought a suit for certain immovable property belonging to the same estate, applied to be, and were, added as defendants. After this *H L*, the son of *R D*, brought a suit claiming possession of a house which originally belonged to Sahai, and which was alleged to be then in the possession of *B R* and *B*.

Held that the provisions of section 43 of the Code of Civil Procedure did not apply to these facts so as to bar the suit brought by *H L*.

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

Mr. *B. E. O'Connor* and Pandit *Madan Mohan Malaviya* (for whom Pandit *Tej Bahadur Sapru*), for the appellant.

Pandit *Sundar Lal* and Munshi *Gokul Prasad*, for the respondents.

STANLEY, C.J. and BANERJI, J.—This is an appeal against the decree of the District Judge of Mirzapur, dismissing the suit of the plaintiff, appellant, on the ground that it is barred by the

* Second Appeal No. 1024 of 1900, from a decree of Nawab Muhammad Ishaq Khan, District Judge of Mirzapur, dated the 2nd of November, 1900, reversing a decree of Munshi Anant Prasad, Subordinate Judge of Mirzapur, dated the 27th of August, 1900.