

1902

JANKI DAS
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modify the decree of the lower Court by directing that compound interest be calculated upon the principal sum found due namely Rs. 1,375, from the date of the mortgage to the date named in the lower Court's decree, namely the 7th of September, 1900. The calculation should be made with half-yearly rests. To this extent we allow the appeal and vary the decree of the Court below. The parties will pay and receive costs here and in the Court below according to their failure and success in this Court, and the necessary entry as to costs will be made in the new decree that will be prepared under section 88 of the Transfer of Property Act. We fix the 19th of May, 1903, as the date by which the money must be paid to save the property from sale.

Decree modified.

1902
July 11.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Knox.

JAS RAM (PLAINTIFF) v. SHER SINGH AND OTHERS (DEFENDANTS).*

Mortgage—Joint Hindu family—Liability of other members of the family under a mortgage executed by the manager.

Where a mortgage of joint family property has been executed by the managing members of a joint Hindu family, the remaining members of the family are proper parties to a suit for sale based on such mortgage. *Dharam Das v. Angan Lal* (1), *Muhammad Askari v. Radha Ram Singh* (2) and *Lachman Das v. Dattu* (3) referred to.

On the 27th of September, 1885, Sher Singh and Kunjal Singh, who were the managers of a joint Hindu family, executed a mortgage in favour of one Jas Ram to secure a sum of Rs. 350 with interest, and hypothecated a one and a half biswa share in certain property. On the 10th of August, 1886, the same parties mortgaged a one biswa share of the same property to secure a principal sum of Rs. 600 and interest. The mortgagee, Jas Ram, sued the mortgagors on his mortgage of the 10th of August, 1886, and obtained a decree. He subsequently brought a suit for sale on the earlier mortgage, but finding that that suit was defective he withdrew it. He then instituted a third suit upon both the

* Second Appeal No. 24 of 1900, from the decree of B. J. Dalal, Esqr., Additional District Judge of Aligarh, dated the 27th September, 1899, modifying the decree of Maulvi Ahmad Ali Khan, Subordinate Judge of Aligarh, dated the 15th January, 1898.

(1) (1899) I. L. R., 21 All., 301.

(2) (1900) I. L. R., 22 All., 307.

(3) (1900) I. L. R., 22 All., 394.

mortgages, and therein impleaded, not only the original mortgagors, but also the other members of the joint Hindu family. He also made defendants two puisne mortgagees of the property. The Court of first instance (Subordinate Judge of Aligarh) gave the plaintiff a decree on both mortgagees, but on appeal the lower appellate Court (Additional District Judge of Aligarh) set aside the decree passed upon the mortgage of the 10th of August, 1886. That Court held that the two causes of action were separate; that the plaintiff had already obtained a decree against Sher Singh and Kunjal Singh, and that if the other members of the joint family refused to be bound by that decree, the plaintiff ought to sue them for a declaration of their liability. The lower appellate Court modified the first Court's decree, and passed a decree in respect of the mortgage of the 27th of September alone. From this decree the plaintiff appealed to the High Court.

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

Mr. *E. A. Howard* (for whom Mr. *Karamat Husain*), for the respondents.

STANLEY, C.J., and KNOX, J.—The suit out of which this appeal has arisen was brought by the plaintiff-appellant to recover the amount due on foot of two mortgages by sale of the mortgaged property. On the 27th of September, 1885, Sher Singh and Kunjal Singh, who were the managers of a joint Hindu family, executed the first mortgage to secure a sum of Rs. 350 and interest, and hypothecated thereby a $1\frac{1}{2}$ biswa share of certain property. On the 10th of August, 1886, the same parties mortgaged a one biswa share of the same property to secure a principal sum of Rs. 600 and interest. The plaintiff brought a suit against the mortgagors on foot of the mortgage of the 10th of August, 1886, and obtained a decree. He also, in October, 1892, brought a suit for sale on foot of the mortgage of the 27th of September, 1885, but finding that that suit was defective, withdrew it in 1896. He thereupon instituted the present suit on both the mortgages, and in this suit he has impleaded, not only the original mortgagors but also the other members of the joint Hindu family,

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forming together the defendants first party, and also Girwar Singh and Tara Singh, puisne mortgagees of the property. The Court of first instance gave the plaintiff a decree on both mortgages, but on appeal the Additional Judge set aside the decree passed on the mortgage of the 10th of August, 1886. He held that the two causes of action were separate, that the plaintiff had already obtained a decree against Sher Singh and Kunjal Singh, and that if the defendants in group No. 2 (that is the other members of the joint family) refused to be bound by that decree, he should sue them for a declaration of their liability. Accordingly he modified the decree of the Court of first instance, and passed a decree in respect of the mortgage of the 27th of September, 1885, alone. It appears to us, in view of the decisions of this Court, that the learned Additional Judge was wrong in the view which he took, and that it was open to the plaintiff to sue the other joint members of the family together with the mortgagors under the circumstances of the case. It is true that in respect of the mortgage of the 10th of August, 1886, the plaintiff had already obtained a decree against the mortgagors; but this does not preclude the plaintiff from making the mortgagors parties to the present suit, which is brought also on foot of the mortgage of the 27th of September, 1885. The course which the plaintiff adopted appears to us to have been a proper and convenient course. As authority for holding that a suit properly lay against the members of the family other than the mortgagors, we may refer to the cases following *viz.* *Dharam Singh v. Angan Lal* (1), *Muhammad Askari v. Radha Ram Singh* (2), *Lachhman Das v. Dallu* (3), and also to the judgment in the unreported case of *Chunni Lal v. Makund Singh* (First Appeal No. 100 of 1898), in which the late Chief Justice Sir Arthur Strachey and Mr. Justice Burkitt followed the ruling in *Dharam Singh v. Angan Lal*. For these reasons we are of opinion that this appeal must be allowed. We accordingly set aside the decree of the lower appellate Court, and restore the decree of the Court of first instance, but with some modifications. The Subordinate Judge has in the

(1) (1899) I. L. R., 21 All., 301. (2) (1900) I. L. R., 22 All., 307.
 (3) (1900) I. L. R., 22 All., 304.

decree treated the two mortgages as if, in fact, they constituted one mortgage. We think that there ought to have been a separate declaration in respect of each mortgage, and accordingly we modify the decree and declare that on the 15th of July, 1898, the sum of Rs. 1,110-12-0 was payable for principal, interest and costs on foot of the mortgage of the 27th of September, 1885, and that on the same date there was payable to the plaintiff the sum of Rs. 749-12-0 for principal, interest and costs on foot of the mortgage of the 10th August, 1886. And we direct that on payment of the sum due on the mortgage of the 27th September, 1885, with further interest on the 11th of January, 1903, the plaintiff shall deliver up to the defendants all documents relating to the property comprised in that mortgage, and transfer such property to the defendants free from incumbrances, and in like manner that on payment on the same date of the sum due on the mortgage of the 10th of August, 1886, with further interest, the plaintiff shall deliver up all documents relating to the property specified in that mortgage, and transfer such property to the defendants free from incumbrances. In each case we direct the mortgaged property to be sold in default of payment in order to satisfy the mortgage-debt. The appellant will be entitled to his costs here and hitherto.

Decree modified.

REVISIONAL CRIMINAL.

1902
July 22.

Before Mr. Justice Know.

PRABHU LAL (APPLICANT) v. RAMI (OPPOSITE PARTY)*

Criminal Procedure Code, sections 488, 489, 490—Maintenance—Agreement between the parties subsequent to the order for maintenance—Such agreement no bar to enforcement of order for maintenance so long as such order subsists.

Where an order for maintenance is passed under section 488 of the Code of Criminal Procedure and the parties afterwards come to an agreement between themselves as to what is to be paid, the existence of such agreement will not of itself be a bar to the enforcement of the order for maintenance; but it will be the duty of the party chargeable, if he wishes to be relieved from the

* Criminal Reference No. 437 of 1902.