

1904

March 24.*Before Mr. Justice Blair and Mr. Justice Banerji.*BABU LAL AND OTHERS (PLAINTIFFS) v. RAM SAHAI AND OTHERS
(DEFENDANTS).**Act No. XII of 1884 (Agriculturists Loans Act), section 5—Ex-proprietary tenant—Mortgage of trees to secure takavi advance—Relinquishment of ex-proprietary holding to zamindar.*

Certain ex-proprietary tenants in return for loans taken from Government, mortgaged to Government some trees standing on their holding. They then purported to relinquish the holding to the zamindars. The loan not being repaid, Government caused the trees to be sold. *Held* that the zamindars could have no claim against the purchaser for the price of the trees. *Sham Das v. Batul Bibi* (1) followed.

THE plaintiffs in this case sued to recover from the defendants possession of certain trees, and damages for appropriation of the fruit thereof, under the following circumstances:—Three out of the four defendants were ex-proprietary tenants. They had taken *takavi* advances from Government, and, as security for these advances, mortgaged to Government the trees in suit, standing upon their ex-proprietary holding. After this they relinquished their ex-proprietary holding to the zamindars, plaintiffs. But the amount of the *takavi* advances had not been repaid, and Government, accordingly, proceeded to realize the same under the provisions of section 5 of Act No. XII of 1884, as if they were arrears of land revenue, by sale of the trees. At this sale the trees were purchased by the fourth defendant. The plaintiffs alleged that the mortgage had terminated by the relinquishment of their holding by the ex-proprietary tenants, the first three defendants, and that the fourth defendant had therefore acquired nothing by his purchase. The Court of first instance (Munsif of Fatehpur) dismissed the suit, holding that it was not cognizable by a Civil Court. The plaintiffs appealed, and their appeal was dismissed by the lower appellate Court. (District Judge of Cawnpore). The plaintiffs thereupon appealed to the High Court.

Pandit *Sundar Lal*, for the appellants.

Babu *Jogindro Nath Chaudhri*, for the respondents.

* Second Appeal No. 305 of 1902, from a decree of H. P. Dupernex, Esq., District Judge of Cawnpore, dated the 8th of January, 1902, confirming a decree of Babu Banke Bihari Lal, Munsif of Fatehpur, dated the 5th of December 1900.

BLAIR and BANERJI, JJ.—This appeal arises out of a suit brought by the appellants for the possession of certain trees existing on land which once formed the ex-proprietary holding of the first three defendants. It appears that those defendants had taken *takavi* advances from Government, and as security for such advances hypothecated the trees in question. The amount not having been repaid, the Government, in pursuance of the provisions of section 5 of Act No. XII of 1884, realized the amount of the advances as if it were land revenue, by sale of the trees. The fourth defendant became the purchaser at such sale. After the hypothecation of the trees and before the sale the defendants Nos. 1 to 3 had relinquished their ex-proprietary holding to the plaintiffs, who are the zamindars. As the defendant No. 4 had taken possession of the trees under his auction purchase, the plaintiffs brought this suit claiming the trees on the ground that the mortgage had ceased to have any effect after the relinquishment of the holding and that the defendant had acquired nothing at the auction sale. One of the grounds on which the Court below decided the case is that such a suit was not cognizable by a Civil Court having regard to section 24 of the Land Revenue Act of 1873. Holding the view that we do in this case, it is not necessary for us to decide the question of jurisdiction. It is clear that the defendants Nos. 1 to 3 could not, by relinquishing their ex-proprietary holding, defeat the interests of Government under the hypothecation made in its favour for the *takavi* advances given to those defendants. This was held in the case of *Sham Das v. Batul Bibi* (1). The fourth defendant as purchaser at the auction sale which was held for the realization of the *takavi* loan has stepped into the shoes both of the mortgagee and the mortgagors, and consequently has acquired the ownership of the trees which were mortgaged to the Government. The plaintiffs were not therefore entitled to recover possession of the trees from the fourth defendant, and the Court below has rightly dismissed the suit. We dismiss the appeal with costs.

Appeal dismissed.

(1) (1902) I. L. R., 24 All., 538.

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BABU LAL
v.
RAM SARAI