

1905

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decree-holder is entitled to execute the decree which has been made absolute by that order. The present application for execution having been made within three years of the date of the order absolute, no question of limitation arises. In our judgment the appeal has no force. We accordingly dismiss it with costs.

Appeal dismissed.

1905
August 17.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burdett.

CHATARBHUJ (PLAINTIFF) v. LACHMAN SINGH (DEFENDANT).^{*}
Act No. IV of 1882 (Transfer of Property Act), section 52—Lis pendens—Contentious suit.

Where there are several defendants to a suit, the suit does not become "contentious" within the meaning of section 52 of the Transfer of Property Act, 1882, only when all the defendants are served with summonses in the suit, nor can a suit be contentious as regards some of the defendants and not contentious as regards others. *Purotām Saran v. Sanshi Lal* (1) discussed and doubted.

THE facts out of which this appeal arose are as follows:— On the 7th of July, 1886, one Narain Singh executed a mortgage of the property now in dispute. Upon that mortgage the mortgagee brought a suit for sale on the 22nd of July, 1898, against the heirs of Narain Singh, and a decree for sale was passed on the 13th of March, 1899, and at the sale held in execution of that decree the plaintiff, Chaturbhuj, purchased the property in September, 1901. In attempting to get possession of the property so purchased the plaintiff was resisted by the defendant, Lachman Singh, who held it as usufructuary mortgagee under a mortgage executed by one Govind Singh, one of the heirs of Narain Singh, on the 13th of August, 1898. Hence the present suit. The defendant supported his title to retain possession under the mortgage of the 13th of August, 1898, upon the plea that inasmuch as in the suit for sale brought by the original mortgagee summons had not been served upon Govind Singh, although service had been effected on other defendants, until after the 13th of August, 1898, the suit so far as he was concerned had not then

^{*} Second Appeal No. 1212 of 1903, from a decree of W. F. Wells, Esq., District Judge of Agra, dated the 19th of September 1903, reversing a decree of Munshi Maharaj Singh, Munsif of Mattra, dated the 24th of June 1903.

(1) (1899) I. L. R., 21 All., 48.

become contentious, and the plaintiff therefore could not claim the benefit of section 52 of the Transfer of Property Act, 1882. The Court of first instance (Munsif of Muttra) decreed the plaintiff's claim, but the lower appellate Court (District Judge of Agra) reversed the Munsif's decree and dismissed the suit. The plaintiff appealed to the High Court.

Munshi *Gulzari Lal*, for the appellant.

Babu *Durga Charan Banerji*, for the respondent.

STANLEY, C.J. and BURKITT, J.—This is a second appeal from a decree of the learned District Judge of Agra, in which, reversing the decision of the Court of first instance, he dismissed the plaintiff's claim. The suit was brought by the plaintiff to recover possession of property which he had purchased under a decree in a mortgage suit granted on the 13th March, 1899. The defendant, *Lachman Singh*, who holds the property under a mortgage of the 13th of August, 1898, is a usufructuary mortgagee. The facts are shortly these. On the 7th of July, 1886, one *Narain Singh* executed a mortgage of the property in dispute. Upon that mortgage the mortgagee brought a suit for sale against the heirs of *Narain Singh* on the 22nd of July, 1898, and a decree for sale was passed on the 13th of March, 1899, and at a sale held in execution of that decree the plaintiff purchased the property in September, 1901. The suit, it will be observed, was filed on the 22nd of July, 1898, and summonses were served upon the heirs of *Narain Singh* before the 13th of August, 1898, with the exception of *Govind Singh*, one of the heirs of *Narain Singh*, who was a minor. In his case the summons was served by fixing it at the door of the house in which he lived with his mother. This service was subsequently held not to be good service, and as a matter of fact service was not effected until after the 13th of August, 1898, the date on which *Govind Singh*, acting through his mother as his guardian, purported to mortgage the property to the defendant. The defence set up by the defendant was that, inasmuch as the summons had not been served upon *Govind Singh* at the time when he executed the mortgage in his favour, the suit was not a contentious suit, and therefore the purchaser under the decree was not entitled to the benefit of section 52 of the Transfer of Property Act. It is clear that

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on the 13th of August, 1898, the mortgagee's suit was being actively prosecuted as against the defendants, all of whom, with the exception of Govind Singh, had been then served with summons. The learned Munsif held that Govind Singh must have had knowledge of the proceedings, and that in any event the mere fact that he was not duly served before the 13th August, 1898, would not deprive the plaintiff, appellant, of the benefit of the provisions of section 52. He was of opinion that Govind Singh had sufficient notice or knowledge of the pending suit.

The lower appellate Court, however, held that there was no effective service upon Govind Singh prior to the 13th August, 1898, and that therefore at that date there was no active prosecution of a contentious suit within the meaning of the section to which we have referred. For this decision he relied upon the ruling of this Court in the case of *Parsotam, Saran v. Sanehi Lal* (1). In that case it was held that a suit becomes a contentious suit within the meaning of section 52 of the Transfer of Property Act at the time when the summons is served on the defendant. In that case it is to be observed that there was only one defendant, not, as here, several defendants. Whatever be our views as regards the propriety of that decision, we should be bound to follow it unless or until it is overruled by a full Bench of this Court or by a higher tribunal. In fact the Bench did in one other case follow that decision. We are not, however, prepared to extend the operation of the ruling, and we think that we should be doing so if we accede to the argument which has been presented to us by the learned vakil for the respondents. In this case the suit of the prior mortgagee was being actively prosecuted before the 13th of August, 1898, the defendants to that suit having been at that date, with one exception, served with summons, if that be the true test to apply for the purpose of determining whether a suit is a contentious suit or proceeding. We do not say that it is the proper test. The learned vakil for the respondents contends before us that the suit does not become contentious until all the defendants have been served. We are not prepared to accede to this proposition. If we accede to it, it would follow that all the defendants who were

duly served with summons might, despite the provisions of section 52, deal with the property in suit notwithstanding the fact that they were parties to the suit and were duly served with summonses, if only one defendant was not served. We are not prepared to hold that this was the intention of the Legislature, still less are we prepared to hold that a suit can be regarded as contentious as against some of the defendants and not contentious against the others. We think the view of the learned Munsif was correct, and that the plaintiff, appellant, was entitled to the benefit of section 52 of the Transfer of Property Act. This being so, we must allow the appeal, set aside the decree of the lower appellate Court, and, as the appeal has been determined on this preliminary point, we remand it under the provisions of section 562 of the Code of Civil Procedure with directions that it be replaced on the file of pending appeals and be disposed of on the merits. Costs here and hitherto will abide the event.

Appeal decreed and cause remanded.

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REVISIONAL CRIMINAL.

1905
August 17.

Before Mr. Justice Know.

KAMTA NATH *v.* THE MUNICIPAL BOARD OF ALLAHABAD.*

* *Act (Local) No. 1 of 1900 (N.-W. P. and Oudh Municipalities Act), sections 3, 87—Municipal Board—Bye-laws—Interpretation of statutes.*

Where a rule framed by a Municipal Board forbade the "erection or re-erection of any building" in the civil station except with the previous sanction of the Board, it was *held* that such prohibition could not apply to the inclosing by means of a canvas screen of a certain space adjoining a house.

By a rule framed under the provisions of section 87(2) of the North-Western Provinces and Oudh Municipalities Act, 1900, confirmed by the Local Government by G. O. No. ³⁴⁹⁷ XI-423C, dated the 14th of November, 1901, the Municipal Board of Allahabad forbade the "erection or re-erection of any building" in the civil station except with the previous sanction of the Board, and the breach of such rule was made punishable by a fine not exceeding Rs. 50. One Kamta Nath, the occupier of a house in the civil station of Allahabad, inclosed by means of *kanauts*, or canvas

* Criminal Revision No. 183 of 1905.