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amount, namely, Rs. 1,829-7-4. We accordingly to this extent allow the appeal, modify the decree of the Court below by awarding to the plaintiff this sum in addition to the sum already awarded. In other respects the decree will stand. We also think that the plaintiff is entitled to interest at 6 per cent. per annum from the date of the suit on the amount decreed. We so order. Under the circumstances we say nothing as to the costs of this appeal.

Decree modified.

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May 29.

Before Mr. Justice Knox.

MISRI LAL (JUDGMENT-DEBTOR) v. MITTHU LAL AND OTHERS
(DECREE-HOLDERS).*

Civil Procedure Code, section 291—Act No. IV of 1882 (Transfer of Property Act), section 89—Execution of decree—Payment into Court of decretal money and costs—Stay of sale.

Where the sale of mortgaged property has been directed by an order absolute under section 89 of the Transfer of Property Act, 1882, it is open to the person holding the equity of redemption in such property to pay into Court at any time before the sale the amount of the decretal debt and costs, and thereupon the execution proceedings will cease. It is not necessary that the person holding the equity of redemption should wait until the property is actually put up for sale. *Raja Ram Singhji v. Channi Lal* (1) and *Harjans Rai v. Rameshar* (2) followed. *Bibijan Bibi v. Suchi Bewah* (3) referred to.

In this case a certain house was to be sold in execution of a decree for sale held by Mitthu Lal and others and an order absolute for sale pursuant to that decree. By the decree the whole of the house was liable for a debt of Rs. 200 and one-fourth only for a debt of Rs. 558-2-0. Misri Lal, the holder of the prior mortgage for Rs. 200, paid that amount into Court and prayed that three-quarters of the house might be released, and the remaining quarter only sold in execution of the plaintiffs decree-holders' decree. The Court executing the decree (Subordinate Judge of Aligarh) gave effect to the applicant's contention and directed that one quarter of the house only should be sold. The decree-holders appealed. The lower

* Second Appeal No. 1016 of 1904, from a decree of J. H. Cuming, Esq., District Judge of Aligarh, dated the 12th July 1904, reversing a decree of Maulvi Muhammad Ahmad Ali Khan, Subordinate Judge of Aligarh, dated the 30th April 1904.

(1) (1897) I. L. R., 19 All., 205. (2) (1898) I. L. R., 20 All., 354.

(3) (1904) I. L. R., 31 Cal., 863.

appellate Court (District Judge of Aligarh) reversed the order of the first Court, and dismissed Misri Lal's application with costs. Misri Lal thereupon appealed to the High Court.

Babu *Sital Prasad Ghosh*, for the appellant.

Munshi *Lakshmi Narain*, for the respondents.

KNOX, J.—The subject-matter in dispute in this appeal is three-fourths of a certain house. Misri Lal, the appellant, is the owner of the equity of redemption over this property. Mitthu Lal and others, respondents decree-holders, have obtained a decree authorizing them to bring the property to sale. This decree is dated the 19th March 1902. An order absolute for sale under section 89 was obtained by the respondents on 18th July 1903, and the house was advertised for sale. Before it was brought to sale, Misri Lal tendered what was due and claimed to be allowed to release three-fourths of the house and to stop the proceedings for sale so far as this portion of the house was concerned. The respondents contended that as an order absolute for sale had been passed, Misri Lal could not be allowed an opportunity of redeeming it. The Court of first instance, relying on certain judgments of this Court, disallowed the objection. The lower appellate Court referred to the cases of *Raja Ram Singhji v. Chunni Lal* (1) and *Harjas Rai v. Rameshar* (2) and, while admitting they are authorities for the view that section 291 of the Code of Civil Procedure modifies section 89 of the Transfer of Property Act, held that that section did not apply to the present case because the amount of debt and costs, including costs of the sale, have not been tendered. The sale not having taken place, there could be no costs of sale. But I understand that the amount of debt has been paid in. It is clear from the words of section 291 that if this property had been brought to sale, the sale would have had to be stopped before the lot was knocked down if the debt and costs had been tendered to the officer conducting the sale. I see no reason for holding that because the money was tendered before that stage was reached, and because it was tendered to the Court, the rights conferred by section 291 of the Code of Civil Procedure should not be allowed to Misri Lal. In

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this view I am supported by a Full Bench decision of the Calcutta High Court in the case of *Bibijan Bibi v. Suchi Bewa* (1). The result is that the order of the lower appellate Court is set aside and that of the Court of first instance restored with costs.

Appeal decreed.

1905
May 31.

Before Mr. Justice Banerji and Mr. Justice Richards.

ABDUL RAHMAN (DEFENDANT) v. SUKHDAYAL SINGH (PLAINTIFF).^{*}
Act No. VIII of 1890 (Guardians and Wards Act), section 30—Act No. XL of 1858 (Minors Act), section 18—Guardian and minor—Lease by guardian in excess of his powers—Sale of leased property by minor on attaining majority—Suit by purchaser for possession—Limitation—Act No. XV of 1877 (Indian Limitation Act), schedule II, article 91.

The certificated guardian of a minor granted, without previously obtaining the permission of the Court, a perpetual lease of certain immovable property forming part of the minor's estate on the 28th March 1890. The minor came of age on the 7th of December 1901, and on 21st October 1902 sold the property, the subject of the lease mentioned above. On the 22nd of July 1903 the purchaser sued for possession of the property purchased by him, asking for cancellation of the lease if necessary. *Held* that it was not necessary for the plaintiff to ask for cancellation of the lease as a condition precedent to his obtaining a decree for possession, and that the suit was not barred by limitation.

Mauji Ram v. Tara Singh (2), *Girraj Baksh v. Kazi Hamid Ali* (3), *Ramausar Pandey v. Raghuber Jati* (4) and *Unni v. Kunchi Amma* (5) referred to by Banerji, J.

ON the 28th of March 1890, the certificated guardian of one Ibrahim Ali granted a perpetual lease of certain immovable property belonging to the minor to one Abdul Rahman. The lease was granted by the guardian without previously obtaining the permission of the Court. Ibrahim Ali attained majority on the 7th of December 1901, and on the 21st of October 1902 he sold the property which was the subject of the lease to one Sukhdoyal Singh. On the 22nd of July 1903, the purchaser, Sukhdoyal Singh, instituted a suit for recovery of possession of the property purchased by him from Ibrahim Ali "by establishment of the plaintiff's right and declaration of the fact that defendant No. 2 had no right to give a perpetual lease on behalf

^{*} First Appeal No. 58 of 1904, from an order of Maulvi Muhammad Ahmad Ali, Subordinate Judge of Aligarh, dated the 23rd of February 1904.

(1) (1904) I. L. R., 31 Cal., 863. (3) (1886) I. L. R., 9 All., 340.
(2) (1881) I. L. R., 3 All., 852. (4) (1883) I. L. R., 5 All., 490.
(5) (1890) I. L. R., 14 Mad., 26.