

appellant the costs of the appeals to the District Judge and the Court of the Judicial Commissioner. The respondents will also pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellants :—*T. L. Wilson & Co.*

Solicitors for the respondents :—*Watkins and Lempriere.*

J. V. W.

1905

CHAUDHRI
AHMAD
BAKISH
v.
SEEN
RAGHUBAR
DAYAL.

APPELLATE CIVIL.

1905
May 8.

Before Mr. Justice Knox and Mr. Justice Aikman.

GHAFAUR HASAN KHAN (JUDGMENT-DEBTOR) v. MUHAMMAD KIFAYAT-
ULLAH KHAN (DECREE-HOLDER).*

Act No. IV of 1882 (Transfer of Property Act), sections 89 and 90—Execution of decree—Mortgage—Order absolute for sale of part only of the mortgaged property—Property sold insufficient to satisfy the mortgage debt—Application for personal decree against mortgagor.

A mortgagor in a suit for sale of the mortgaged property obtained a decree for sale of the whole; but when applying subsequently for an order absolute for sale relinquished his claim as against part of the mortgaged property and took an order for sale of part only, and that order became final. The property ordered to be sold was brought to sale, but realized an amount insufficient to satisfy the decree. *Held* that the decree-holder was under these circumstances competent to apply for and obtain a personal decree against the mortgagor under section 90 of the Transfer of Property Act, 1882. *Sheo Prasad v. Behari Lal* (1) followed.

By a deed, dated the 5th of September 1895, Ghafur Hasan Khan mortgaged to Kifayat-ul-lah Khan certain zamindari property in three villages together with a house and a plot of land in Shahjahanpur. On the 14th of January 1897 the mortgagor brought a suit for sale of the mortgaged property, and on the 29th of March 1897 he obtained a decree for sale of the whole property. On the 12th of March 1900 the decree-holder applied for an order absolute for the sale of the zamindari property in one of the villages and of the plot of land in Shahjahanpur. In his application the decree-holder

* Second Appeal No. 733 of 1904, from an order of C. D. Steel, Esq., District Judge of Shahjahanpur, dated the 30th of April 1904, reversing an order of Babu Nihal Chandra, Subordinate Judge of Shahjahanpur, dated the 19th of December 1903.

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LAH KHAN.

expressly stated that the other three items of mortgaged property were valueless, being subject to prior mortgages, and that he did not wish to proceed against them. Accordingly an order absolute was made for the sale of that portion of the mortgaged property only the sale of which was asked for. That portion of the mortgaged property was sold, and the proceeds of the sale proved insufficient to satisfy the decree. The decree-holder thereupon applied for a personal decree against the judgment-debtor under section 90 of the Transfer of Property Act, 1882. The Court of first instance (Subordinate Judge of Shahjahanpur) dismissed the application relying upon the ruling in *Muhammad Akbar v. Munshi Ram* (1). On the decree-holder's appeal, however, the District Judge of Shahjahanpur reversed the decision of the lower Court and granted the applicant a decree under section 90. In his order the District Judge referred to *Musahab Zaman Khan v. Inayat-ullah* (2) The judgment-debtor appealed to the High Court.

Babu *Jogindro Nath Chaudhri* (for whom Babu *Satyajit Chandra Mukerji* and Babu *Sarat Chandra Chaudhri*), for the appellants.

Maulvi *Muhammad Ishaq*, for respondent.

KNOX and AIKMAN, JJ.—The judgment in the case of *Sheo Prasad v. Behari Lal* (3) and especially the concluding portion of it, is entirely in the respondent's favour. Rightly or wrongly the respondent obtained an order under section 89 of the Transfer of Property Act for the sale of a portion only of the mortgaged property. That order became final between the parties. The property so ordered to be sold has been sold, and the proceeds of sale have been found to be insufficient. Consequently the conditions precedent to a decree under section 90 have been fulfilled. We dismiss the appeal with costs.

Appeal dismissed.

(1) Weekly Notes, 1899, p. 208.

(2) (1892) I. L. R., 14 All., 513.

(3) (1902) I. L. R., 25 All., 59.