

1906  
December 20.

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

MUNSHI AND OTHERS (DEFENDANTS) v. DAULAT AND OTHERS  
(PLAINTIFFS).\*

*Act No. IV of 1882 (Transfer of Property Act), section 60—Mortgage—Redemption—Effect of purchase by mortgagees of part of the mortgaged property.*

When the integrity of a mortgage has been broken up upon the purchase by the mortgagees of the equity of redemption in a portion of the mortgaged property, the right of redemption of each of the several mortgagors is confined to his own interest in the mortgaged property; he cannot redeem the remainder of the mortgaged property against the wishes of the mortgagees. *Nawab Azimut Ali Khan v. Jowahir Sing* (1), *Kuray Mal v. Puran Mal* (2) and *Girish Chunder Dey v. Juramoni De* (3) followed.

THIS was a suit brought by nine persons alleging themselves to be the heirs of the original mortgagors to redeem a usufructuary mortgage. The Court of first instance (Additional Munsif of Ghaziabad) found the interests of the mortgagors in the property mortgaged were separate, and also that the plaintiff Daulat was the only one of the plaintiffs who was in fact entitled to redeem as heir to one of the original mortgagees. That Court accordingly gave Daulat a decree for redemption of his share. The plaintiffs appealed. The lower appellate Court (Subordinate Judge of Meerut) found that the original mortgagees, Jwala Nath and Debi Singh, had sub-mortgaged their rights under the mortgage in suit, and that some of these sub-mortgagees had acquired by purchase portions of the mortgaged property. This circumstance, however, had not, according to the Subordinate Judge, the effect of destroying the integrity of the mortgage. In the result the lower appellate Court gave Daulat a decree for redemption of the whole of the mortgaged property. The defendants appealed to the High Court.

*Munshi Gokul Prasad*, for the appellants.

*Mr. R. K. Sorabji*, *Babu Durga Charan Banerji*, *Babu Giridhari Lal Agarwala* and *Babu Lukshmi Narain*, for the respondents.

\* Second Appeal No. 1078 of 1905, from a decree of Mr. H. David, Subordinate Judge of Meerut, dated the 27th of May 1905, reversing a decree of Pandit Suraj Narain Majju, Additional Munsif of Ghaziabad, dated the 30th of November 1903.

(1) (1870) 13 Moo. I. A., 404. (2) (1879) I. L. R., 2 All., 565.  
(3) (1900) 5 C. W. N., 83.

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STANLEY, C.J., and BURKITT, J.—The question raised in this appeal appears to us to be concluded by authority. It is this—whether, when the integrity of a mortgage has been broken up upon the purchase by the mortgagees of the equity of redemption in a portion of the mortgaged property, one of several mortgagors is entitled to redeem the remainder of the mortgaged property against the wish of the mortgagees, or is his right of redemption confined to his share of the property? In the case of *Nawab Azimut Ali Khan v. Jowahir Sing* (1) their Lordships of the Privy Council held that co-mortgagors, who were entitled to a portion of mortgaged property, could not redeem against the will of the mortgagee any portion of the mortgaged property save their own village. They held that the mortgagors could not acquire the interest of the mortgagee in other parts of the mortgaged property against the will of the mortgagee. They say in the course of their judgment that “the appellant (*i.e.*, the mortgagee), if desirous of retaining possession of these villages as mortgagee is entitled to do so against the plaintiffs, whose right in that case is limited to the redemption and recovery of their village of Husseinpur upon payment of so much of the sum deposited in Court as represents the portion of the mortgage-debt chargeable on that village.” In this Court in the case of *Kuray Mal v. Puran Mal* (2), Spankie and Oldfield, JJ., adopted the same view and quoted the authority of the case to which we have referred. In that case it was held that where all the proprietors of an estate joined in mortgaging it, and the mortgagee subsequently purchased the share of one of the mortgagors, and one of the mortgagors sued to redeem his own share and also the share of another of the mortgagors, he could only redeem his own share. To the same effect is the decision of *Rampini and Sale, JJ.*, in the case of *Girish Chunder Dey v. Juramoni De* (3). In view of these decisions we must allow the appeal; but before we can finally determine it, we must have findings of the lower appellate Court upon certain issues. These are as follows:—

- (1) What portion of the mortgaged property has been purchased by the defendants, or any of them, and how

(1) (1870) 13 Moo. I. A., 404.

(2) (1879) I. L. R., 2 All., 565.

(3) (1900) 5 C. W. N., 53.

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much of it still remains subject to the mortgage of the 10th of July 1843 in the pleadings mentioned?

- (2) What portion or share of the mortgaged property belongs to the plaintiffs and what proportion of the mortgage-debt is chargeable against that portion or share, regard being had to the provisions of section 82 of the Transfer of Property Act?

We remand these issues to the lower appellate Court under the provisions of section 566 of the Code of Civil Procedure, and direct the Court to take such additional evidence as may be requisite. On return of the findings the parties will have the usual ten days for filing objections.

*Issues remitted.*

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January 3.

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

RAM KISHAN SHASTARI (PLAINTIFF) v. KASHI BAI (DEFENDANT).<sup>\*</sup>  
*Act No. XV of 1877 (Indian Limitation Act), section 12—Limitation—*  
*“Time requisite for obtaining a copy.”*

The words ‘the time requisite for obtaining a copy’ in the second and third paragraphs of section 12 of the Indian Limitation Act, 1877, are not confined to cases where the person appealing has in person or by a properly authorized agent applied for a copy of a judgment or decree. *Ramamurthi Aiyar v. Subramania Aiyar* (1) dissented from.

THIS was an appeal under section 10 of the Letters Patent of the Court from a judgment of Knox, J. The facts of the case are set forth in that judgment, which was as follows:—

KNOX, J.—The sole question which has to be considered in this second appeal is whether the words used in section 12 of the Limitation Act No. XV of 1877, namely, ‘the time requisite for obtaining a copy of the judgment on which the decree appealed against is founded’ and the similar words in the preceding paragraph, namely, ‘the time requisite for obtaining a copy of the decree appealed against,’ refer only to cases in which the person appealing has in person or by a properly authorized agent applied for the copy of the judgment or decree. The date of the decree is the 30th June 1904. The defendant

<sup>\*</sup>Appeal No. 50 of 1906 under section 10 of the Letters Patent.

(1) (1902) 12 Mad., L. J., 385.