

1908  
April 4.

Before Mr. Justice Aikman and Mr. Justice Karamat Husein.  
RAM PRASAD AND OTHERS (DEFENDANTS) v. MAN MOH AN AND  
OTHERS (PLAINTIFFS)\*

*Hindu law—Joint Hindu family—Foreclosure of mortgage—Sons not made parties—Right of sons to redeem—Act No. IV of 1882 (Transfer of Property Act), section 85.*

The mortgagees of a mortgage of joint family property executed by the father alone sued for and obtained a decree for foreclosure. At the time the suit was instituted the mortgagees knew that there were sons and grandsons jointly interested with the mortgagor in the mortgaged property, but, notwithstanding this, they omitted to make them parties to their suit.

Held that the sons and grandsons were not precluded from instituting a suit for redemption. *Bhavani Prasad v. Kallu* (1) referred to. *Debi Singh v. Jia Ram* (2) distinguished.

IN this case certain mortgagees obtained a decree for foreclosure of a mortgage held by them against one Phul Singh, who was the father of some of the plaintiffs and grandfather of the others. The mortgagees, notwithstanding that they were aware of the existence of the plaintiffs and of their interest in the mortgaged property, omitted to make them parties to their suit for foreclosure. The plaintiffs then instituted the present suit, admitting their liability to satisfy the debt incurred by the mortgagor, but asking to be given an opportunity to redeem the mortgage. The Court of first instance (Munsif of Lalitpur) held that the suit was not maintainable and accordingly dismissed it. On appeal the lower appellate Court (District Judge of Jhansi) reversed the decision of the Munsif and remanded the suit under section 562 of the Code of Civil Procedure. Against this order of remand the mortgagees defendants appealed to the High Court.

Dr. Satish Chandra Banerji (for whom Babu Sarat Chandra Chaudhri) and Munshi Deokinandan, for the appellants.

Mr. E. A. Howard and Babu Durga Charan Banerji, for the respondents.

AIKMAN and KARAMAT HUSEIN, JJ.—The appellants obtained a decree for foreclosure against one Phul Singh, who is father of some of the respondents and grandfather of the others. It is found that, although the appellants had notice of the interests of

\* First Appeal No. 88 of 1907, from an order of H. E. Holme, District Judge of Jhansi, dated the 4th of July 1907.

(1) (1895) I. L. R., 17 All., 537. (2) (1902) I. L. R., 25 All., 214.

the sons and grandsons, they did not implead them in the suit for foreclosure. The respondents brought the suit out of which this appeal arises asking to be given an opportunity to redeem the mortgage. They did not dispute their liability to satisfy the debt incurred by the mortgagor. The Court of first instance held that the suit was not maintainable. On appeal the learned District Judge held that it was, and sent the case back for decision on the merits. The present appeal has been preferred against this order of remand.

It is contended that we ought to apply to this case the principle of the ruling of the Full Bench in *Debi Singh v. Jia Ram* (1). That was a case in which the sons of a Hindu father sued to get back from innocent purchasers their share of the family estate, which had been sold in execution of a decree obtained upon a mortgage by their father in a suit to which they were no parties. Their claim was based solely on the ground that they had not been parties to the suit, in which the decree was obtained. In the judgment of the learned Chief Justice in that case, which was concurred in by Knox, J., stress is repeatedly laid on the fact that the plaintiffs wished to oust strangers—see pages 233, 225, and particularly 226, of the judgment. In this case all that the plaintiffs ask is that they should be given an opportunity to redeem the mortgage which was foreclosed by the appellants, who knew of the plaintiffs' interest and yet did not make them parties to the suit to foreclose. In our opinion we should not be justified in extending the principle laid down in the case relied on behalf of the appellants to the present case. It was owing to the appellants' failure to comply with the provision of law that the respondents did not have an opportunity to redeem. In our opinion the observations of Banerji, J., in the Full Bench case, *Bhawani Prasad v. Kallu* (2), at page 548 of the judgment, and the observations of Edge, C.J., at page 562 and following pages are distinctly in favour of the view taken by the learned District Judge. The judgment of the Chief Justice in that case was concurred in by three other Judges who took part in deciding the case. In our opinion the appeal fails, and it is dismissed with costs.

*Appeal dismissed.*

(1) (1902) I. L. R., 25 All., 214. (2) (1895) I. L. R., 17 All., 537.