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that in neither of these the facts are exactly the same as the facts in the present case, but the principle that section 50 of the Indian Registration Act will not avail to the holder of a subsequently registered deed over an earlier deed not compulsorily registrable, if the holder of the registered deed at the time of the registration had notice of the earlier unregistered deed, is one, as I have already said, which can easily be extended to and covers the position of the parties in the case before me. At the time when Bhoja was informed by letter of the plaintiff's mortgage he had ample time to reconsider his position and to refuse to register the deed. He had notice of the previous transaction sufficient to put him on enquiry, and could have ascertained whether in taking the sale-deed he was or was not taking it subject to the incumbrance of 1895. The plea taken in appeal prevails. The appeal is decreed, the decrees of the Courts below are set aside, and as this decision is upon a preliminary point, upon which the Courts below have erred, the case will be returned to the Court below under section 562 of the Code of Civil Procedure with directions to re-admit it on its file of pending cases and dispose of it according to law. Costs here and hitherto will abide the event. *

Appeal decreed and cause remanded.

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March 14.

Before Mr. Justice Richards.

KHAIRATI (DEFENDANT) v. BANNI BEGAM (PLAINTIFF).†
*Act No. IV of 1882 (Transfer of Property Act), section 85—Mortgage—
Suit for sale on a mortgage—Parties.*

Whether or not section 85 of the Transfer of Property Act, 1882, refers solely to persons interested in the equity of redemption, it is not essential to join as a party defendant in a suit for sale on a mortgage a person whose interest in the mortgaged property, if it exists, would be antagonistic to the claims of both mortgagor and mortgagee. *Juggeswar Datt v. Bhuban Mohan Mitra* (1) referred to.

THE facts of this case are as follows :—

The defendant in the suit out of which this appeal arose—
one Khairati—held a mortgage, dated the 10th of December,

* [Cf. also *Tejpal v. Girdhari Lal*, *supra* p. 130—Ed.]

† Second Appeal No. 23 of 1907, from a decree of D. R. Lyle, District Judge of Moradabad, dated the 3rd of December 1906, confirming a decree of Deoki Nandan Sahi, Munsif of Moradabad, dated the 7th of August 1906.

1895, from one Intizam Begam. On the 29th of August 1904, Khairati brought a suit for sale upon this mortgage and obtained a decree. When, however, he applied for execution of this decree, he was resisted by Musammât Banni Begam, the mother-in-law of Intizam Begam, who claimed the property mortgaged as her own. Banni Begam's objections having been disallowed, she brought the present suit under section 283 of the Code of Civil Procedure. The Court of first instance (Munsif of Moradabad) decreed the plaintiff's claim upon the ground that Khairati knew that Banni Begam claimed that Intizam Begam was a benamidar on her behalf, and that he was therefore bound to make her a party to the suit on his mortgage. In appeal this decision was upheld by the District Judge. Khairati thereupon appealed to the High Court.

Munshi *Gokul Prasad* (for whom *Lala Jung Bahadur Lal*), for the appellant.

The respondent was not represented.

RICHARDS, J.—Khairati, defendant in the present suit, brought a suit on the 29th August 1904 upon foot of a mortgage, dated the 10th December 1895, whereby Intizam Begam mortgaged the property, the subject matter of the present suit, to him. He only made his mortgagor Intizam Begam, a defendant to the suit. A decree was obtained, but when Khairati applied for execution the property was claimed by Banni Begam, the mother-in-law of Intizam Begam. The present suit was then instituted by Banni Begam under the provisions of section 283 of the Code of Civil Procedure. The Courts below have decided the suit in favour of Banni Begam on the simple ground that Khairati knew that Banni Begam claimed that Intizam Begam was benamidar for her, and that he was bound to make her a party to the suit he brought on foot of his mortgage. I have only to consider whether the lower Courts were justified in decreeing Banni Begam's suit without coming to any finding whether or not the property was really the property of the plaintiff, or on any other issue arising in the case. Section 85 of the Transfer of Property Act provides that in a mortgage suit, all persons having an interest in the property comprised in the mortgage must be made parties. In the present suit, no doubt, Khairati knew that Banni Begam

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claimed the property. Her claim, however, was adverse to both mortgagor and mortgagee. Khairati could not admit her claim. To do so would be fatal to his mortgage and the suit on foot thereof.

In the case of *Jaggewar Dutt v. Bhuban Mohan Mitra* (1) it was held that adverse claimants ought not to be made parties to a mortgage suit for the purpose of litigating their titles, and that the only proper parties to such a suit are persons interested in the equity of redemption. In a carefully considered judgment, Mookerjee, J., gives many cogent reasons for such a proposition. In the present appeal it is unnecessary for me to decide that Khairati's suit would have been bad had he joined Banni Begam as a party, but the Courts below have held that his suit was bad because he did not join her as a defendant.

I certainly agree with the learned Judges who decided the case I have cited that as a general rule it would be highly inconvenient to allow adverse titles paramount to that of the mortgagor and mortgagee to be litigated in a mortgage suit. To do so would cause the greatest confusion. Section 45 of the Code of Civil Procedure provides that when causes of action are joined which the Court considers cannot be conveniently tried or disposed of together it may order separate trials or any other order that may be necessary or expedient. Possibly this enactment is sufficient and a suit is not actually bad because an adverse claimant is made a party. I am, however, clearly of opinion that the suit of Khairati on his mortgage was not bad because he did not make Banni Begam a defendant, and this is the only matter necessary for decision in the present appeal. No one appears on behalf of the respondent.

I allow the appeal, set aside the decrees of both the Courts below and remand the case under section 562 of the Code of Civil Procedure to the Court of first instance through the lower appellate Court with directions to readmit the suit under its original number in the register and dispose of it according to law. The costs will be dealt with by the Court finally disposing of the case.

Appeal decreed.