

circumstances of that case were exceptional. The rule appears to be, as we have stated, that a lambaradar cannot of himself execute a lease of land beyond such term as the circumstances of the particular year or season may require. We therefore dismiss the appeal with costs.

1908

THE AM
SINGH
v.
KRUHI RAM.

Appeal dismissed.

Before Mr. Justice Sir George Knox and Mr. Justice Aikman.
SUNDAR DEO (PLAINTIFF) v. BHAGWAN DAS AND OTHERS
(DEFENDANTS).*

1908
February 7.

*Act No. IX of 1872 (Indian Contract Act), section 178—Pawnor and pawnee—
Pawnor not owner but having a right to possession—Suit by owner for
declaration of his title.*

A person who had obtained possession of certain movable property belonging to a minor in the capacity of a trustee, and who had been allowed to retain possession of such property after the minor came of age, pawned some of it to persons who were found to have acted, negligently perhaps, but honestly and in good faith. *Held* that the pledge was valid, but the owner was entitled to a declaration of his right to redeem the articles so pawned.

THIS was a suit brought for a declaration of the plaintiff's right to redeem certain property, which had been pawned under the following circumstances. According to the plaint his grandfather left the plaintiff at the time of his death a minor and not fit to manage his affairs, and therefore he appointed Babu Ki-han Dat an agent and made over all the jewelry and property to him in trust for the plaintiff. The plaintiff attained majority, but allowed the defendant to continue in possession of the aforesaid property on his behalf. He subsequently found out that a considerable portion of the property had been pawned by Kishan Dat through Lachmi Nandan, another of the respondents and brother-in-law of Kishan Dat, to the other three respondents. Kishan Dat and Lachmi Nandan were prosecuted and convicted of embezzlement with regard to the said property. The ornaments were during the criminal trial deposited in the Criminal Court. This suit was brought under the direction of that Court to declare the plaintiff's right to possession of them. The Court of first instance (Subordinate Judge of Agra) gave the plaintiff a declaration that the plaintiff was entitled to redeem

* Second Appeal No. 993 of 1905 from a decree of A. B. Bruce, District Judge of Agra, dated the 29th of September 1905, confirming a decree of Shankar Lal, Subordinate Judge of Agra, dated the 20th of April 1905.

1908

SUNDAR
DEO
v.
BHAGWAN
DAS.

the ornaments in dispute, with one exception, upon payment of the money which might be still due in respect of the ornaments pawned by Kishan Dat through Lachhmi Nandan, and that Kishan Dat and Lachhmi Nandan were liable to the plaintiff for such amount as he might pay. On appeal the District Judge confirmed the decree of the first Court. The plaintiff appealed to the High Court.

The Hon'ble Pandit *Sundar Lal* and Pandit *Baldeo Ram Dave* for the appellant.

Pandit *Moti Lal Nehru* and *Lala Kedar Nath*, for the respondents.

KNOX and AIKMAN, JJ.—The appellant in this second appeal was plaintiff in the Court of first instance. According to the plaint his grandfather left the plaintiff at the time of his death a minor and not fit to manage his affairs, and therefore he appointed Babu Kishan Dat an agent and made over all the jewelry and property to him in trust for the plaintiff. The plaintiff attained majority, but allowed the defendant to continue in possession of the aforesaid property on his behalf. He subsequently found out that a considerable portion of the property had been pawned by Kishan Dat through Lachhmi Nandan, another of the respondents and brother-in-law of Kishan Dat, to the other three respondents. Kishan Dat and Lachhmi Nandan have been prosecuted and convicted of embezzlement with regard to the said property. The ornaments had during the criminal trial been deposited in the Criminal Court. This suit was brought under the direction of that Court to declare the plaintiff's right to possession of them. The Court of first instance gave the plaintiff a declaration that the plaintiff was entitled to redeem the ornaments in dispute, with one exception, upon payment of the money which might be still due in respect of the ornaments pawned by Kishan Dat through Lachhmi Nandan, and that Kishan Dat and Lachhmi Nandan were liable to the plaintiff for such amount as he might pay. On appeal the learned District Judge confirmed the decree of the first Court. He found that Kishan Dat's possession over the property was not acquired by any offence or fraud and that the pawnees acted in good faith. He applied the law as contained in section 178 of

Act No. IX of 1872. The plaintiff comes here in second appeal and contends that Kishan Dat was not in possession of the jewelry pawned within the meaning of section 178 of Act No. IX of 1872 and that neither Kishan Dat nor Lachhmi Nandan had any authority to pawn the jewelry. The case has been very ably argued by the learned advocate for the appellant and our attention has been called to several rulings. None of these is exactly on all fours with the circumstances of the present case, and there is no ruling that we can find by this Court. The section is undoubtedly a difficult one to construe, especially when taken in connection with the language of section 179 of the same Act. Having regard to the findings by the lower appellate Court we think that the case does fall within the provisions of section 178 and that the pawnees are protected by the provisions of that section. We dismiss the appeal with costs.

Appeal dismissed.

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

JANKI PRASAD SINGH (PLAINTIFF) v. BALDEO PRASAD AND OTHERS
(DEFENDANTS).*

Act No. IX of 1872 (Indian Contract Act), sections 69 and 70—'Person interested in the payment of money'—Volunteer—Civil Procedure Code, section 283.

The plaintiffs, alleging themselves to be the purchasers of the mortgagees' rights in certain land, paid the amount of a decree against the mortgagees in order to save the property from sale. But it had been already found in a suit under section 283 of the Code of Civil Procedure, that the sale to the plaintiffs was fictitious and inoperative. *Held* that the plaintiffs were not entitled to recover the amount paid as above described from their vendors. *Ram Tukul Singh v. Bisenwar Lall Sahoo* (1) and *Chedi Lal v. Bhagwan Das* (2), referred to.

THE defendants in this case executed a sale deed purporting to convey to the plaintiffs their mortgagees' rights in certain lands in manza Khampar. One Bhikari Teli in execution of a money decree against the defendants attached their mortgagee interest. The plaintiff objected in the execution department, but their

* Second Appeal No. 1118 of 1906, from a decree of R. L. H. Clarke, District Judge of Gorakhpur, dated the 30th of August 1906, confirming a decree of Laddi Prasad, Mansif of Deoria, dated the 25th of June 1906.

(1) (1875) L. R., 2 I. A., 131. (2) (1839) I. L. R., 11 All., 234.

1908

SUNDAR
DEO
v.
BHAGWAY
DAS.

1908
February 8.