

1911

January 31.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.

OHUNNI LAL (DEFENDANT) v. SIKISIAN SINGH AND OTHERS

(PLAINTIFFS), *

Mortgage—Mortgage of sir land—Purchase of proprietary rights by mortgagee—Suit for redemption—Amount payable by mortgagor.

After a usufructuary mortgage of certain *sir* lands the mortgagee at an auction sale in execution of a simple money decree purchased the proprietary rights in the mortgaged property, the mortgagor becoming an ex-proprietary tenant. On a suit for redemption being brought, *held* that the mortgagee, having himself broken up the integrity of his security, could not be permitted to cast the whole burden of the debt upon the ex-proprietary rights. *Bisheshar Dial v. Ram Surup* (1) referred to.

THE facts of this case were as follows :—

Certain plots of *sir* land were mortgaged with possession by the plaintiffs' ancestor to the defendant's ancestor in 1831 for Rs. 1,300. In 1888 the zamindari rights, including the *sir*, were sold at auction and purchased by the defendant. The plaintiffs sued for redemption of the mortgage. The first court held that the effect of the sale was to leave the ex-proprietary rights of the plaintiffs liable for part only of the mortgage debt, and allowed them redemption on payment of a proportionate part of the mortgage money. The lower appellate court upheld that decision. The defendant appealed.

Mr. B. E. O' Connor (with him Munshi Gokul Prasad), for the appellant, contended that on sale of proprietary rights in the *sir* the mortgage attached to the newly-acquired rights of ex-proprietary tenancy and a new security having been substituted the plaintiffs could not redeem except on payment of the entire amount of the mortgage money; *Sham Das v. Babul Bibi* (2).

Munshi Gulzari Lal, for the respondents, submitted that the rights of an ex-proprietary tenant were part and parcel of the proprietary rights which under the law were secured to a person who lost his *sir* land; *Bhawani Prasad v. Ghulam Muhammad* (3). The principle applicable was that laid down in *Bisheshur Dial v. Ram Surup* (1).

STANLEY, C. J., and GRIFFIN, J.—This appeal arises out of a suit for redemption of a mortgage made in 1831 by the

* Second Appeal No. 1289 of 1909 from a decree of Juggat Narain, Additional Judge of Aligarh, dated the 18th of November, 1909, confirming a decree of Muhammad Shafi, Subordinate Judge of Aligarh, dated the 25th of January, 1909.

(1) (1900) I. L. R., 22 All., 284.

(2) (1902) I. L. R., 24 All., 538.

(3) (1896) I. L. R., 18 All., 121.

plaintiffs' predecessor in interest. By the mortgage in suit certain specified plots, aggregating an area of 191 bighas, were mortgaged as security for the loan of Rs. 1,300. The lands were described as the *sir* holdings of the mortgagor. In the year 1888 the defendant, appellant in this Court, at an auction sale in execution of a simple money decree, purchased the proprietary rights in the property in suit. The plaintiffs in this suit seek to redeem the mortgage of 1881. The courts below have repelled the contention of the defendant appellant that the whole burden of the mortgage debt should be thrown upon the ex-proprietary rights now held by the mortgagor. They hold that the mortgagor's ex-proprietary interest was still liable for a share of the mortgage debt proportionate to the value of the ex-propriator's rights vested in the mortgagor. The first court held that the plaintiffs should pay one-fourth of the mortgage money in order to redeem the ex-proprietary tenures. The lower appellate court upon appeal by the defendant has in its decree affirmed decision of the court of first instance.

The ground taken in appeal to this Court is that after the sale in 1888 of the mortgagor's proprietary rights in the property in suit the burden of the mortgage debt continued upon the rights which still remained to the mortgagor, namely, his ex-proprietary rights in the land formerly held by him in the *sir*. The contention advanced on behalf of the appellant is that there has been merely a substitution of security.

It appears to us that the view taken by the courts below is a correct one. What was mortgaged in the year 1881 was the mortgagor's right as proprietor in the mortgaged property and further his rights to occupy the plots specified in the mortgage as *sir* holder. In the year 1888, the defendant, appellant to this Court, acquired at auction sale, the proprietary rights of the mortgagor. The defendant appellant has by his own act broken up the integrity of his security. He cannot now be permitted to cast the whole burden of the mortgage debt upon the remainder of his security. The principle of the ruling in *Bisheshwar Dial v. Ram Sarup* (1) is applicable to the present case. It has not been shown to us that the amount assessed by the court

1911

 CHUNNI
LAL
v.
SHIKSHAN
SINGH.

1911

CHUNNI
LAL
v.
SUKISHAN
SINGH.

1911
January 31.

below as the proportionate share which the ex-proprietary rights should bear to the mortgage debt is erroneous. We dismiss the appeal with costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.
KEHRI SINGH AND OTHERS (PLAINTIFFS), v. CHUNNI LAL AND ANOTHER (DEPENDANTS).*

Hindu law—Mitakshara—Joint family property—Mortgage by father—Sons not made parties to suit for sale on mortgage—Sale under the decree—Suit by sons to redeem their interests.

Where ancestral property belonging to a joint Hindu family has been sold in execution of a decree for sale on a mortgage executed by the father, the sons cannot maintain a suit for redemption of their interests in the property sold upon the ground solely that they had not been made parties to the suit of the mortgagee, nor is their position affected by the fact that the auction purchaser is the mortgagee. *Debi Singh v. Jia Ram* (1), *Lal Singh v. Palandar Singh* (2) and *Balwant Singh v. Aman Singh* (3) followed. *Ram Prasad v. Man Mohan* (4) dissented from. *Ram Nath Rai v. Lachhman Rai* (5) referred to.

THE facts of this case were as follows:—

One Man Singh executed a usufructuary mortgage of certain property on the 15th of February, 1864, in favour of one Bhim Sen, who was the ancestor of the respondents. Subsequently, on the 10th of February, 1878, he executed a simple mortgage of the same property in favour of Bhim Sen. Again, on the 11th of February, 1878, he executed a simple mortgage in favour of one Bijai Pal Singh. Bijai Pal Singh instituted a suit on foot of his mortgage and obtained a decree for sale against the sons and widows of Man Singh on the 29th of February, 1884. In execution of this decree the property was sold on the 20th of December, 1888, to Ram Lal, a son of Bhim Sen. The sons of Bhim Sen obtained a decree for sale on foot of their mortgage of the 10th of February, 1878, on the 9th of June, 1885, and at a sale held in execution of that decree purchased the property. The suit out of which this appeal has arisen, was instituted by the

* Second Appeal No. 700 of 1908, from a decree of H. J. Bell, District Judge of Aligarh, dated the 9th of April, 1908, confirming a decree of Muhammad Shafi, Subordinate Judge of Aligarh, dated the 2nd of September, 1907.

(1) (1902) I. L. R., 25 All., 214. (3) (1910) I. L. R., 31 All., 7.
(2) (1905) I. L. R., 28 All., 182. (4) (1908) I. L. R., 30 All., 255.
(5) Weekly Notes, 1899, p. 27.