

JAMNA DAS (DECREE-HOLDER) v. RAM AUTAR PANDE AND OTHERS,
(JUDGEMENT-DEBTORS).

P. C.
1911
November 2.

[On appeal from the High Court at Allahabad].

Act No. IV of 1882, (Transfer of Property Act) section 90—Mortgage—Sub-mortgage—Purchaser from mortgagor—Mortgage-money part of consideration for sale—Personal liability of purchaser—Sale of mortgagee rights.

In this case it was held (affirming the decisions of the Courts in India in *Jamna Das v. Ram Autar Pande* (1) that the purchaser of the mortgaged property was not a person from whom the balance of the mortgage debt was "legally recoverable" within the meaning of section 90 of the Transfer of Property Act, IV of 1882.

APPEAL from a decree (20th April 1909) of the High Court at Allahabad, which affirmed a decree (16th April, 1907) of the court of the Subordinate Judge of Mirzapur.

The appellant, the holder of a mortgage decree against the respondents under section 88 of the Transfer of Property Act (IV of 1882), applied for a decree under section 90 of that Act, which enacts that "when the net proceeds of any such sale are insufficient to pay the amount due for the time being on the mortgage, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the court may pass a decree for such sum."

The first respondent Ram Autar Pande was the purchaser of the mortgaged property, and the other respondents were the representatives of the mortgagor.

The Subordinate Judge allowed the application against the judgement-debtors other than Ram Autar Pande, but dismissed it as against him.

The main question for decision in this appeal was whether the courts below were wrong in holding that a decree under section 90 could not be passed against the first respondent.

The facts are stated in the report of the case before the High Court (RICHARDS and GRIFFIN, J. J.) which will be found in I. L. R., 31 All., 352.

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On this appeal—

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Sir H. Erle Richards, K. C. and *Ross* for the appellant contended that the first respondent was not merely the purchaser of the equity of redemption, but of the whole mortgage debt, and part of the purchase money had been left in his hands in order to pay off the debt, and that a personal decree could therefore be made against him for payment. The word "defendant" in section 90 of the Transfer of Property Act was not limited to the mortgagor. In making the decree under section 88, which was dated the 29th of November, 1904 (1), the High Court said that if the sale did not satisfy the decree the "mortgagee rights" (which had not been sold) could be proceeded against in execution of the decree. Reference was made to *Matadin Kasodhan v. Kazim Husain* (2) and *Ganga Prasad v. Churni Lal* (3) [Lord MACNAGHTEN referred to *Izzatunnissa Begam v. Partab Singh* (4)]. The decisions of the courts in India, it was submitted, were therefore wrong and should be set aside.

DeGruyther, K. C. and *B. Dube* for the first respondent were not called upon.

The judgement of their Lordships was delivered by LORD MACNAGHTEN:—

This is a perfectly plain case. The action is brought by a mortgagee to enforce against a purchaser of the mortgaged property an undertaking that he entered into with his vendor. The mortgagee has no right to avail himself of that. He was no party to the sale. The purchaser entered into no contract with him, and the purchaser is not personally bound to pay this mortgage debt. Therefore, he is not a person from whom, in the words of the 90th section of the Transfer of Property Act, "the balance is legally recoverable."

Their Lordships will therefore humbly advise His Majesty that this appeal must be dismissed with costs.

Appeal dismissed.

Solicitors for the appellant:—*Ranken Ford, Ford and Chester.*

(1) See I. L. R., 27 All., 364.

(3) (1895) I. L. R., 18 All., 113.

(2) (1891) I. L. R., 13 All., 432.

(4) (1909) I. L. R., 31 All., 583.

Solicitors for the respondent Ram Autar Pande :—*Barrow, Rogers and Nevill.*
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LEKHRAJ KUNWAR (PLAINTIFF) v. HARPAL SINGH AND OTHERS
(DEFENDANTS).

[On appeal from the High Court at Allahabad.]

Hindu law—Inheritance—Impartible estate governed by rule of primogeniture—Estate devised to widow of owner—Suit by reversioner—Compromise of suit by widow and reversioner—Descent of estate governed by the compromise and not by will.

The owner of an impartible estate governed by the rule of primogeniture died leaving a will by which he gave an absolute estate to his widow, against whom S, the next reversioner, brought a suit on the ground that the will was invalid and that he was entitled to possession of the estate. In that suit the parties came to a compromise, by the terms of which it was agreed that the widow should hold for her life the position of "gaddi-nashin," paying S a monthly allowance, and that after her death S or "any representative of his who may be living at that time will be the absolute owner of all the movable and immovable properties and will occupy the gaddi." S predeceased the widow leaving no male issue and without having made any disposition by will or otherwise of his interest in the estate. On the death of the widow in possession, the widow of S sued to recover the estate from members of her husband's family who had possession of it.

Held by the judicial Committee (affirming the decision of the High Court) that the rights of the parties depended not on the will but on the compromise, the terms of which gave S a vested interest in the estate, which retained its character of impartibility, and on the death of S descended not to his widow (the appellant) but to the respondent, his heir, according to the rule of primogeniture.

APPEAL from a judgement and decree (29th May 1908) of the High Court at Allahabad, which reversed a judgement and decree (24th February 1906) of the District Judge of Jaunpur and dismissed the appellant's suit.

The main question for determination in this appeal was as to the effect of a document, dated the 25th of April, 1896, called a compromise, as to the interpretation and legal effect of which the courts in India differed, the District Judge construing it in favour of the appellant and the High Court in favour of the respondents.

The facts of the case are fully stated in the judgement of the High Court, and in the judgement of their Lordships of the

Present :—Lord MACNAGHTEN, Lord ROBSON, Sir JOHN EDGE and Mr. AMERL ALL.