

petition. Against this order Bindhachal Prasad Rai applied in revision to the High Court.

Mr. *M. L. Agarwala*, for the applicant.

Babu *Benode Behari*, for the opposite parties.

PIGGOTT, J.—In view of the definition of the word “offence” in the Code of Criminal Procedure it is clear that a person in respect of whom information has been laid before a Magistrate to the effect that he is likely to commit a breach of the peace, or is otherwise liable to the provisions of section 107 of the Code, is not a person accused of any offence. An order for payment of compensation cannot be made against a man who has petitioned a Magistrate to take action under section 107 of the Code. The objection is one which should have been taken before the Magistrate when the petitioner, Bindhachal Prasad, was called upon to show cause why the order under section 250 should not be made against him; but the order complained of being in my opinion illegal I cannot allow it to stand now that it has come before me in revision. I set aside the order directing Bindhachal Prasad to pay compensation to each of the four persons in respect of whom proceedings under section 107 of the Code were taken. The money, if paid, will be refunded.

*Order set aside.*

## PRIVY COUNCIL.

SHEO SHANKAR RAM AND OTHERS (PLAINTIFFS) v. JADDO KUNWAR.  
(DEFENDANT).

[On appeal from the High Court of Judicature at Allahabad.]

*Parties—Parties to suits on mortgages—Hindu joint family—Members of Hindu joint family represented by managing members of the family—Suit by members not made parties to suit to redeem property sold in execution of mortgage executed by managing members.—Act No. IV of 1882 (Transfer of Property Act), section 85.*

In this appeal their Lordships of the Judicial Committee affirmed the decision of the High Court in *Jaddo Kunwar v. Sheo Shankar Ram* (1) on the ground that the plaintiffs (appellants) who sued to redeem a mortgage after foreclosure on the plea that they had not been parties to the mortgage suit, were properly and effectively represented in the suit by the managing members

\**Present* :—Lord Moulton, Lord Parke of Waddington, Sir John Edge, and Mr. AMBER ALL.

(1) (1910) I, L. R., 33 All., 71.

1914

BINDHACHAL  
PRASAD  
RAI  
v.  
LAL BIHARI  
RAI.

\*P.C.  
1914  
May 1, 12.

1914

SHEO  
SHANKAR  
RAM  
v.  
JADDO  
KUNWAR.

of the Hindu joint family of which the plaintiffs were also members, and that in such a case the court was not bound to set aside the execution proceedings where substantial justice had been done merely because every existing member of the family was not formally a party to the suit.

Their Lordships saw no reason to dissent from the Indian decisions which showed that there were occasions, including foreclosure actions, when the managers of a Hindu joint family so effectively represented all the other members that the family as a whole was bound, and were of opinion that it was clear on the facts of this case, and on the findings of the court upon them, that it was a case where that principle ought to be applied. There was not the slightest ground for suggesting that the managers of the joint family did not act in every way in the interests of the family itself and no question arose under section 85 of the Transfer of Property Act (IV of 1882), because the mortgagee had no notice of the plaintiff's interests.

APPEAL No. 97 of 1912 from a judgement and decree (8th July, 1910) of the High Court at Allahabad, which reversed a judgement and decree (18th December, 1908) of the court of the Subordinate Judge of Ghazipur.

The principal question for determination on this appeal was whether the appellants (plaintiffs) were entitled to redeem the mortgaged properties in suit under the circumstances of the case.

The facts of the case are fully stated in the report of the appeal before the High Court (TUDBALL and CHAMLER, JJ.) which will be found in *L. L. R.*, 33 All., 71.

The Subordinate Judge made a decree in favour of the plaintiffs, and the High Court dismissed the suit.

On this appeal—

*De Gruyther, K. C.*, and *B. Dube* for the appellants contended that they were under section 85 of the Transfer of Property Act (IV of 1882) necessary parties to the foreclosure suits, and the decrees made therein were not binding upon them as they had not been properly represented in those suits. The managing members of a Hindu joint family did not necessarily represent all the joint family. "All persons who have an interest" in the property in suit should be joined as parties. Could a joint family be treated as a "person"? It was submitted it could not. Order XXXIV, rule 1, of the Code of Civil Procedure (Act No. V of 1908) has now been substituted for section 85 of Act No. IV of 1882. The fact that the respondent was not aware of the existence of the appellants when she brought her suit should not relieve her from the

1914

---

 SHEO  
SHANKAR  
RAM  
v.  
JADDO  
KUNWAR.

necessity of making them parties until she had proved that after inquiries, she had been unable to ascertain who were the other members of the joint family of which she knew Hira Ram and Dhundha Ram were members. [Lord MOULTON referred to *Jogendra Deb Roy Kut v. Funindro Deb Roy Kut* (1)]. The latest case before this Board was *Kishan Prasad v. Har Narain Singh* (2); but that case was distinguishable because there three of the members of a Hindu joint family were with the consent or delegation of the others managers of a business carried on for the benefit of all the members and the suit was one on a contract made in the course of that business. In this case the ignorance of the respondent and her omission to make the appellants parties cannot defeat their right, if, as it was submitted was the case, they were not effectively represented in the mortgage suits. Members of an ordinary Hindu joint family were not partners, and there was no question of a trust, the manager of a joint family not being in the position of a trustee. The appellants were entitled to redeem the properties in suit, at any rate to the extent of their respective shares.

*Sir Erle Richards, K. C.*, and *G. R. Lowndes* for the first respondent were not called upon.

1914, May 12th :—The judgement of their Lordships was delivered by Lord MOULTON :—

This is an appeal from a judgement and decree of the High Court of Judicature for the North-Western Provinces, Allahabad, which reversed a decree of the Court of the Subordinate Judge of Ghazipur. The matter in issue is whether the plaintiffs or some of them are entitled to redeem the mortgaged properties in suit, or whether they are bound by certain foreclosure decrees, dated the 27th of March, 1895, which were followed by orders absolute dated the 3rd of April, 1897, upon which possession was taken in August, 1897.

So far as is necessary to make clear the question in issue, the facts of the case are as follows. The first and principal respondent, Musammatt Jaddo Kunwar, was the mortgagee of certain properties under a mortgage, dated the 16th of September, 1887, and of certain other properties by a mortgage of the 6th

(1) (1871) 14 Moo. I. A., 367 (376). (2) (1911) I. L. R., 33 All., 272; L. R., 38 I. A., 45.

1914

SHEO  
SHANKAR  
RAM  
v.  
JADDO  
KUNWAR.

of January, 1891. In 1895 she brought suits to foreclose those mortgages. But in the interval, Hira Ram and Dhundha Ram, members of a joint Hindu family, had acquired interests in the mortgaged properties partly by purchase and partly by obtaining a usufructuary mortgage. Both these interests were of course subordinate to the mortgage to Musammat Jaddo Kunwar. Although Hira Ram and Dhundha Ram acquired these interests in their own name, they were in fact acquired by them on behalf of the joint family, although the respondent Musammat Jaddo Kunwar had no notice of this fact at any time material to the question in this action.

Hira Ram and Dhundha Ram were made parties to the foreclosure actions by Musammat Jaddo Kunwar as parties interested in the mortgaged properties, and the foreclosure decrees were pronounced against them. They did not make any attempt to avail themselves of their right to redeem, so that the order absolute was pronounced against them. They were at the time of acquiring the properties and also at all material times in the foreclosure suits the managers of the joint family and they acted as such, both in acquiring the properties and in abstaining from redeeming them. The appellants, the plaintiffs in this suit, are other members of the joint family, and they claim that they were, as such members, interested in the mortgaged properties at the time of the foreclosure suits, and that they ought to have been joined therein as parties, and that inasmuch as they were not so joined the foreclosure decrees do not bind them, and they are entitled now to redeem. The Subordinate Judge found in their favour on this point of principle, but held that they were entitled to redeem their own properties only and not the entire properties comprised in the said mortgages. On appeal to the High Court of Judicature it was held that they were bound by the foreclosure decrees on the ground that the joint family was effectively represented in the suit, and that in such case the court is not bound to set aside the execution proceedings where substantial justice has been done merely because every existing member of the family was not formally a party to the suit.

There seems to be no doubt upon the Indian decisions (from which their Lordships see no reason to dissent) that there are

occasions, including foreclosure actions, when the managers of a joint Hindu family so effectively represent all other members of the family that the family as a whole is bound. It is quite clear from the facts of this case and the findings of the courts upon them that this is a case where this principle ought to be applied. There is not the slightest ground for suggesting that the managers of the joint family did not act in every way in the interests of the family itself, and no question arises under section 85 of the Transfer of Property Act, 1882, because the mortgagee had no notice of the plaintiffs' interests. Their Lordships have therefore no hesitation in deciding that there is no reason for interfering in the decision of the High Court. They will, therefore, humbly advise His Majesty that this appeal should be dismissed and that the appellants should pay the costs.

1914

---

SHEO  
SHANKAR  
RAM  
v.  
JADDO  
KUNWAR.

*Appeal dismissed.*

Solicitor for the appellants:—*Douglas Grant.*

Solicitors for the first respondent:—*T. L. Wilson, & Co.*

J. V. W.

---

## MISCELLANEOUS CIVIL.

*Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.*  
RAJ KISHORE DAS (PETITIONER) v. JAINT SINGH AND OTHERS  
(OPPOSITE PARTY).\*

1914  
March, 6.

---

*Lease—Expired term of lease bequeathed to widow—Widow holding over on expiry of lease—Grant by Government to widow of property the subject of the lease—Nature of estate taken by widow.*

A lease of a village in Kumaun was granted by the Government in 1844 for a period of twenty years. The lessee died in 1852 having left his interest in the village (without clearly specifying what it amounted to) to his widow for life and after her to her daughter for life with a reversion in favour of a certain temple. The widow, however, continued in possession of the village down to 1871, when the Government granted her a proprietary interest in it, which she subsequently sold.

*Held*, on suit for possession after the death of the widow and her daughter by a person obtaining as reversioner to the original lessee, that the estate which the widow acquired in 1871 as the grantee of the Government was her own personal estate and not merely an enlargement of the leasehold estate of her husband, and that the plaintiff had consequently no right to succeed.

---

\* Civil Miscellaneous No. 129 of 1913.