

Court was justified under the circumstances of the case in ordering the appellant to give security for costs. If the Court was justified in ordering security for costs to be given, it had no option but to reject the appeal when the order for security was not complied with. We find it quite impossible to certify that the proposed appeal involves a substantial question of law. We, therefore, dismiss the application but make no order as to costs.

Application dismissed.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

MUNNA LAL AND OTHERS (DEFENDANTS) v. MUNUN LAL

AND OTHERS (PLAINTIFFS.)*

Mortgage by conditional sale—Foreclosure—Sale by mortgagee after foreclosure—Rights of purchaser—Suit for sale by puisne mortgagees—Act No. IX of 1908 (Indian Limitation Act), schedule article 134—Limitation.

A mortgagee under a mortgage by conditional sale foreclosed, and after foreclosure sold the mortgaged property as unincumbered. Subsequently to this, certain puisne mortgagees who had not been made parties to the foreclosure proceedings brought a suit for sale on their mortgage. *Held* (1) that the purchasers could not hold up as a shield the mortgage by conditional sale of their vendor, for that had become extinct on foreclosure, and (2) that article 134 of the first schedule to the Indian Limitation Act, 1908, had no application to the suit.

THIS was a suit for sale on a second mortgage. The first mortgage had been a mortgage by conditional sale, but the mortgagee had foreclosed and had thereafter sold the mortgaged property to the answering defendants. The court of first instance decreed the plaintiffs' claim and the lower appellate court dismissed the defendants' appeal. The defendants thereupon appealed to the High Court urging two main contentions, first, that they were entitled to set up as a shield against the suit the mortgage by conditional sale held by their vendor, and, secondly, that article 134 of the first schedule to the Indian Limitation Act, 1908, applied and the suit was barred by limitation.

Dr. *Satish Chandra Banerji*, for the appellant.

The respondents were not represented.

MUHAMMAD RAFIQ and PIGGOTT, JJ.—This was a suit for sale upon a mortgage. It is now being contested by three

1914

MUHAMMAD
ABDUL
GHAFUR
KHAN
v.
THE
SECRETARY
OF STATE
FOR INDIA
IN COUNCIL.

1914

April, 6.

* Second Appeal No. 225 of 1913 from a decree of Austin Kondal, District Judge of Cawnpore, dated the 18th of November, 1912, confirming a decree of Munari Lal, Subordinate Judge of Cawnpore, dated the 18th of December, 1911.

1914

MUNNA LAL
v.
MUNUN LAL.

persons, who were defendants Nos. 9, 10 and 11 in the original array of parties. In order to make clear the single point raised by this appeal it is sufficient to state the following facts. There was upon a part of the property now in suit a mortgage by conditional sale anterior in date to that of the plaintiffs. The prior mortgagee under this mortgage brought a suit for foreclosure, without impleading the plaintiffs, the puisne mortgagees. He obtained a decree for foreclosure and thus acquired the right, title and interest of the original mortgagor in the property covered by the mortgage by conditional sale. He then transferred the property by an out and out sale to these defendants Nos. 9, 10 and 11, who are now the appellants before us. The mortgage deed on which the present suit is brought is one of the 19th of July, 1890, and the plaintiffs in order to maintain the suit are compelled to avail themselves of the special period of limitation allowed by section 31 of the Indian Limitation Act, No. IX of 1908. The case for the appellants now before us is that they are entitled to hold up the original prior mortgage by conditional sale as a shield against the plaintiffs' claim, so that the plaintiffs cannot bring the property to sale without first redeeming this prior mortgage. They further contend that, as transferees from the original prior mortgagee, they are entitled to plead limitation under article 134 of schedule I to the Limitation Act, and that consequently the present suit should be dismissed as time-barred in so far as it affects that portion of the property in suit which was covered by the prior mortgage. In our opinion article 134 of schedule I to the Indian Limitation Act has no application to the present suit. In the first place, the suit is one for sale and is brought under the special provisions of section 31 of Act IX of 1908. In the second place, the position of these defendants appellants is not that of transferees from a mortgagee in the sense of article 134 aforesaid. At the time of the transfer in their favour the property mortgaged had been foreclosed and their transferor had acquired all the rights of the original mortgagor in the property which he purported to transfer. He was, therefore, what he represented himself as being, the owner of the property. We fail to see that the case of these defendants differs in any essential respect from that of transferees of property which has been sold as free of

incumbrances, when, as a matter of fact, it is subject to a mortgage charge. For these reasons we hold that this appeal fails and it is hereby dismissed. It has been heard *ex parte*, so we make no order as to costs.

1914

MUNNA LAL
v.
MUNUN LAL.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

1914
April, 7.

ABDUS SAMAD (PLAINTIFF) v. THE CHAIRMAN, MUNICIPAL BOARD, MEERUT (DEFENDANT).*

Act (Local) No. I of 1900 (United Provinces Municipalities Act), sections 87 and 152—Municipal board—Refusal of permission to re-erect a building—Remedy open to applicant special appeal not suit.

When a Municipal board refuses permission to erect or re-erect a building, the proper way to contest such refusal is to appeal in the manner provided for by section 152 of the United Provinces Municipalities Act, 1900. The applicant for permission cannot maintain a civil suit for an injunction to restrain the board from interfering with the plaintiff's building.

THE facts of this case were as follows :—

One Abdul Samad was the owner of certain shops situated on either side of a public road in Meerut. These shops had at one time been connected with each other by means of a sort of gallery resting on arches. The gallery having fallen into disrepair, Abdus Samad applied to the municipal board for permission to re-build it and also to build some further structure on the top. The board refused permission. Thereupon Abdus Samad instituted the present suit against the board, claiming an injunction restraining it from interfering with his proposed building and for damages. The court of first instance decreed the claim in part. On appeal, however, that decree was set aside and the suit dismissed. Abdus Samad accordingly appealed to the High Court.

Mr. B. E. O'Connor and Maulvi Muhammad Ishaq, for the appellant.

Mr. A. E. Ryves and Mr. W. Wallach, for the respondent.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit brought by the plaintiff against the municipal board of Meerut. The circumstances are as follows. The plaintiff has

* Second Appeal No. 1555 of 1912 from a decree of L. Johnston, District Judge of Meerut, dated the 2nd of October, 1912, reversing a decree of Muhammad Husain, first Additional Subordinate Judge of Meerut, dated the 13th of July, 1912.