

unborn son." The learned author has referred to the case of *Mussamat Goura Chowdhraïn v. Chummun Chowdry* (1) as an authority for the proposition laid down by him. That case no doubt supports his view, but it was dissented from by the Madras High Court in *Sabapathi v. Somasundram* (2). The learned Judges held that "an alienation by a Hindu to a *bona fide* purchaser for value is liable to be set aside by a son who was in his mother's womb at the time of the alienation." In the recent case of *Sri Datla Venkata Subba Raju Garu v. Gatham Venkatrayudu* (3), the same court assumed that a son could contest an alienation made by his father at a time when the son was in his mother's womb. The same view appears to have been adopted by the Bombay High Court. (See West and Buhler's Hindu Law, page 803). We agree with this view. Both on authority and on principle we are of opinion that a son subsequently born alive is competent to contest an alienation made by the father when the son was in the womb. The court below was, therefore, wrong in dismissing the suit on the ground on which it dismissed it. We allow the appeal, set aside the decree of the court below and remand the case to that court with directions to re-admit it under its original number in the register and dispose of the other questions which arise in the case. Costs here and hitherto will be costs in the cause.

Appeal decreed and cause remanded.

FULL BENCH.

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

LAL BAHADUR SINGH (DEFENDANT) v. ABHARAN SINGH AND OTHERS
(PLAINTIFFS)*.

Act No. IV of 1882 (Transfer of Property Act), section 99—Sale of mortgaged property in contravention of terms of section—Right of representatives of mortgagor to redeem.

If a mortgagee brings the mortgaged property to sale in contravention of the provisions of section 99 of the Transfer of Property Act, 1882, such sale is not

*Second Appeal No. 1530 of 1913, from a decree of B. J. Dalal, District Judge of Benares, dated the 30th of May, 1913, confirming a decree of Partab Singh, Subordinate Judge of Jaunpur, dated the 9th of October, 1912.

(1) [1864] W. B., Gap No. 340. (2) (1892) I. L. R., 16 Mad., 76.

(1914) 27 M. L. J., 560.

1914

DEO NARAIN
SINGH
v.
GANGA SINGH.

1915

January, 11.

1915

LAL BAHADUR SINGH
v.ABHARAN
SINGH.

void, but merely voidable. If such a sale is confirmed, the auction purchaser, whether he be an outsider or the mortgagee bidding with the leave of the Court, obtains an indefeasible title, and the right of the mortgagor and those who represent him to redeem is absolutely extinguished.

Tara Chand v. Imdad Husain (1); *Muhammad Abdul Bashid Khan v. Dilsubh Rai* (2); *Madan Makund Lal v. Jamna Kaulapuri* (3) and *Mangli Prasad v. Pati Ram* (4) followed. *Jhabba Lal v. Chhajju Mal* (5) overruled. *Sardar Singh v. Ratan Lal* (6), *Ashutosh Sikdar v. Behari Lal Kirtania* (7) and *Panoham Lal Chowdhury v. Kishun Pershad Misser* (8) referred to.

THE facts of this case were as follows :—

A usufructuary mortgage of certain property which was zamindari including *sir* land, was executed by Amir Singh and his brother's widow, Dulra, in favour of Rani Dharamraj Kunwar, ancestress of Lal Bahadur Singh, defendant. The mortgagor failed to deliver possession of the *sir* land, and the mortgagee brought a suit and obtained a decree for possession of this land and mesne profits and costs. In execution of this decree for mesne profits the decree-holder sold the mortgaged property and purchased it herself on the 20th of August, 1892. The sale was confirmed and the usual certificate granted and the auction purchaser then got possession in 1893. The plaintiffs, who are the grandsons and great grandsons of Amir Singh, were not parties to the decree or the sale held in execution of that decree. They brought the present suit in 1911, alleging that they were still in possession of the property but that the name of the defendant was entered in the revenue papers in 1907, and he had denied their title. They claimed a declaration that the mortgage of 1881 still subsisted and they were entitled to redeem, or in the alternative a declaration that they were exproprietary tenants of the *sir* land sold in execution of the decree against Amir Singh, on the ground that the sale was null and void under the provisions of section 99 of the Transfer of Property Act.

The courts below decreed the suit and granted the first relief asked for in the plaint. The defendant appealed.

Dr. *Satish Chandra Banerji* (with him the Hon'ble *Munshi Gokul Prasad*), for the appellant :—

- | | |
|------------------------------------|------------------------------------|
| (1) (1896) I. L. R., 18 All., 325. | (5) (1907) 4 A. L. J., 787. |
| (2) (1905) I. L. R., 27 All., 517. | (6) (1914) I. L. R., 36 All., 516. |
| (3) (1893) 2 A. L. J., 123. | (7) (1907) I. L. R., 35 Cal., 61. |
| (4) (1904) 1 A. L. J., 360. | (8) (1910) 14 C. W. N., 579. |

The main question in this case is whether a sale held in contravention of the provisions of section 99, Transfer of Property Act, is wholly void or only voidable. It is submitted that this section only prescribes a rule of procedure, and as such it has now been transferred, with some modification, to the Code of Civil Procedure. As the sale in this case took place in 1892, the section to be considered is section 99 of Act IV of 1882. That section deals with the execution of a money decree, and does not prohibit such execution completely. It permits attachment, but defers sale till a suit has been instituted under section 67 and a decree obtained. There is no inherent absence of jurisdiction in the execution court, therefore, to hold the sale, and, as the provision is for the benefit only of the mortgagor, the sale, if it takes place, is merely irregular and not a nullity. The Allahabad High Court has consistently held that the sale is only voidable and the mortgagor may object before the sale has been confirmed, but after confirmation the title vests in the auction purchaser (Act XIV of 1882, section 316) and the sale cannot be impugned in the absence of fraud. The first case is *Taru Chand v. Imdad Husain* (1). If the sale had been a nullity, the plaintiff there would have had no *locus standi* to sue for partition and the other co-sharer would have succeeded against him. This case was followed in *Mangli Prasad v. Pati Ram* (2), *Madan Makund Lal v. Jamna Kaulapuri* (3) and *Muhammad Abdul Rashid v. Dilsukh Rai* (4). In the last case *Khairajmal v. Daim* (5) was referred to. The sale there was prior to the enactment of section 99, but the Privy Council treated it as an irregularity in procedure; *Kishan Lal v. Umrao Singh* (6). The only case against this view, is a single Judge decision, *Jhabba Lal v. Chajju Mal* (7), which purports to follow *Shib Dass Dass v. Kali Kumar Roy* (8), and the Allahabad rulings to the contrary were apparently not cited. The Calcutta High Court has since overruled its earlier decisions and now holds the sale to be merely voidable; *Ashutosh Sikdar v. Behari Lal Kirtania* (9). The latest case in our Court, *Sardar Singh v. Ratan Lal* (10),

1915

 LAL BAHADUR SINGH
 v.
 ABHARAN SINGH.

(1) (1896) I. L. R., 18 All., 325.

(6) (1908) I. L. R., 30 All., 146.

(2) (1904) 1 A. L. J., 360.

(7) (1907) 4 A. L. J., 787.

(3) (1898) 2 A. L. J., 123.

(8) (1903) I. L. R., 30 Cal., 433.

(4) (1905) I. L. R., 27 All., 517.

(9) (1907) I. L. R., 35 Cal., 61.

(5) (1904) I. L. R., 32 Cal., 296.

(10) (1914) I. L. R., 36 All., 516.

1915

LAL BAHADUR SINGH
v.
ABHARAN SINGH.

does not hold the sale to be void, but proceeds upon the theory that a mortgagee cannot divest himself of his obligation to be redeemed. But the Privy Council has never said that he can in no case acquire an irredeemable title; on the contrary, the position of a mortgagee decree-holder who obtains leave to bid and purchases is exactly the same as that of a stranger auction purchaser. So far as this decision purports to lay down that Hindu sons can redeem after the sale has become unimpeachable against their father, it is in the teeth of a series of cases in this Court. (Here he was stopped.)

Munshi *Haribans Sahai*, for the respondent, divided his argument into three parts, viz., (i) A sale held in contravention of the provisions of section 99, Transfer of Property Act, is null and void. (ii) Even if such a sale be held to be voidable the mortgagee does not thereby acquire an irredeemable title. (iii) In any case the sons of the mortgagor who were no parties to the sale were not bound by it and their right of redemption was not destroyed.

As to (i). It was submitted that section 99, Transfer of Property Act, lays down that a mortgagee shall not be entitled to bring the mortgaged property to sale otherwise than by bringing a suit under section 67 of the Act. These are words of prohibition and anything done in disregard of them is done without jurisdiction and is null and void; *Rameshwar Singh v. Sheodin Singh* (1). It is true that their Lordships of the Privy Council in the case of *Khairajmal v. Daim* (2) have held a sale by a mortgagee otherwise than by bringing a suit on his mortgage, to be voidable, but in that case the sale had taken place before the Transfer of Property Act came into force. Moreover, it was a case from Sindh where the Transfer of Property Act did not apply. Their Lordships decided the case upon general principles of equity. There was no question of the construction of section 99, Transfer of Property Act, and no amount of decision on principles of equity could override the express provision of the statute. The Judges in the Full Bench case reported in 35 Calc., 61, committed the initial error of relying upon 32 Calc., 296, in construing section 99 of the Transfer of Property (1) (1889) I. L. R., 12 All., 510. (2) (1904) I. L. R., 32 Calc., 296.

Act, and their decision therefore is not sound law; *Jhabba Lal v. Chajju Mal* (1).

As to (ii). The observation of MR. JUSTICE MOOKERJEE in 35 Calc., 61, the case of *Khairajmal v. Daim* (2), was the most important authority in support of the proposition that even if a sale in contravention of section 99 of the Transfer of Property Act, be only voidable the mortgagee does not thereby acquire an irredeemable title. Reliance was placed upon the observation of their Lordships of the Privy Council at p. 316. It is true that in the case before them their Lordships did not allow the persons who were parties to the sale proceedings to redeem, but the reason for that was given by their Lordships themselves at p. 316. Thus the mortgagor's right of redemption still subsists although the sale may have been confirmed. In the Calcutta case two questions were referred to the Full Bench, viz. (i) "Whether when a sale has been held in contravention of the provisions of section 99 of the Transfer of Property Act, the sale is a nullity or an irregular and voidable sale. (ii). Whether the right of redemption of the mortgagor is or is not affected by such sale."

RAMPINI, A. C. J., whose judgement was concurred in by BRETT MITRA, and WOODROFFE, J.J., decided only the first point holding the sale to be voidable. As to the second point his Lordship observed: "It seems neither necessary nor advisable for us to answer the second question put by the referring Bench." MR. JUSTICE MOOKERJEE who delivered a separate judgement also left the second point undecided. MR. JUSTICE WOODROFFE in a subsequent case, *Pancham Lal Chowdhury v. Kishun Pershad Misser* (3), held that in the Full Bench case the High Court had not decided the question as to whether after the sale the right of redemption was still left to the mortgagor, and sitting with MR. JUSTICE CASPERZ held that a mortgagee by purchasing the property did not acquire an irredeemable title. He became a trustee of the mortgagor who could redeem in spite of the sale having becoming final; *Sardar Singh v. Ratan Lal* (4). The cases relied upon by the other side are all distinguishable. The case reported in 18 All., 325, was decided on quite a different point. There the Revenue Court in

1915

LAL BAHADUR SINGH
v.
ABHARAN SINGH.

(1) (1907) 4 A. L. J., 787.

(3) (1910) 14 C. W. N., 579.

(2) (1904) 1 L. R., 32 Calc., 296.

(4) (1914) 1 L. R., 36 All., 516.

1915

LAL BAHADUR SINGH

v.
ABHARAN SINGH.

execution of a decree for rent had ordered the mortgaged property to be sold holding that section 99 of the Transfer of Property Act had no application to sales held by a Revenue Court. The High Court was of opinion that, inasmuch as the matter was within the exclusive jurisdiction of a Revenue Court, a Civil Court could not question the sale. Another distinguishing feature in that case was that the sale was questioned by "other co-sharers" and their Lordships were of opinion that they had no interest in the share sold and could not therefore contest the sale. In 1 A. L. J., 360, the first court had allowed both the mortgagor and the purchaser to redeem the property and the High Court restored the decree of the first court. Now if after sale no right was left in the mortgagor why was he allowed to redeem? This ruling rather supports my contention than that of the other side. The case in 27 All., 517, related to a sale held before the Transfer of Property Act and as no retrospective effect could be given to the Act it was not a case under section 99 and had no application. It is only cases of sales under section 99 that have to be considered. Further it was decided on the ground of non-joinder. I. L. R., 30 All., 146, related to a sale in favour of a third person and was clearly distinguishable. As to the third point it was submitted that a Hindu son is not bound by a sale, prohibited by law, held against the father. In such cases he is not represented by the father and cannot be deemed to be a party to the sale proceedings and the sale, as against him, was null and void.

Dr. Satish Chandra Banerji was not heard in reply.

RICHARDS, C. J.—The material facts connected with this appeal are as follows:—On the 11th of June, 1881, Amir Singh and Musammat Dulra Kunwar executed a usufructuary mortgage of certain zamindari property in favour of Rani Dharam Raj Kunwar. The real mortgagor was the said Amir Singh. Possession of the *sir* land was not given in accordance with the provisions of the mortgage deed and the Rani brought a suit against the mortgagors for possession and mesne profits. She obtained a decree, and in execution, for mesne profits and costs, the mortgaged property was attached, put up to sale and purchased by the Rani. The sale was subsequently confirmed and the usual certificate issued. Lal Bahadur Singh now represents the estate

of Rani Dharam Raj Kunwar. The plaintiffs are the grandsons and great grandsons of Amir Singh and they have brought the present suit for a declaration that the auction sale mentioned above is null and void and that they are still entitled to redeem the mortgage. There is a further claim for a declaration that the plaintiffs, or some of them, are in any event ex-proprietary tenants of the *sir* land.

It seems to me that the only question we have to decide is what is the effect of section 99 of the Transfer of Property Act, which was in force at the date of the purchase by Rani Dharam Raj Kunwar. It has not been contended that, if the Rani had never occupied the position of mortgagee, and if she had obtained a simple money decree and in execution of such decree purchased the property, the plaintiffs, who are the grandsons and great grandsons of Amir Singh, could now set aside the sale and get possession of the property. The contention is that the sale was in contravention of the provisions of section 99 of the Transfer of Property Act and therefore null and void. In my opinion this case must be disposed of on the assumption that the plaintiffs have exactly the same rights that Amir Singh would have had if he had brought the suit instead of them. Section 99 is as follows :—

“Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section 67.”

It seems to me that the decision depends on whether a sale at the instance of a mortgagee in contravention of the section was wholly illegal. If it was, then the equity of redemption never vested in the Rani and the mortgage is still capable of being redeemed. Section 99 has been repealed and new provisions have been substituted in the Code of Civil Procedure. Order XXIV, rule 14, of the first schedule is as follows :—

“Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgage property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage.”

Two things will here be noticed, first that the provisions of law restraining a mortgagee from bringing mortgaged property

1915

LAL BAHADUR SINGH
v.
ABHARAN SINGH.

1915

LAL BHRA-
DUR SINGH
v,
ABHARAN
SINGH.

to sale is not so wide as previously and second that the provision finds its place in an Act dealing with matters of procedure and not of substantive law. If the effect of section 99 is that all sales in contravention of its provisions are absolutely null and void great hardship might occur in many cases, for example, a purchase might be made by a perfectly innocent third party who would have to give up the property. In considering the construction of the section I can see no distinction between a purchase by the mortgagee and a purchase by a third party. Undoubtedly the mortgagor, or any one interested in the property in cases governed by section 99, could object to the mortgaged property being brought to sale by the mortgagee on foot of a simple money decree, and in all probability the sale could be set aside on this sole ground at any time before confirmation. But can the sale be set aside after the confirmation? This question depends on whether we regard the provisions of the section as enacting that no sale can legally be had, or as merely giving the mortgagor and persons interested in the property a right to object to the sale being had, provided the objection is taken at the proper time, that is to say, sometime before the sale is confirmed.

In the case of *Tara Chand v. Imdad Husain* (1) the plaintiff sued for partition. His title to his alleged share was a purchase by him at an auction sale at the instance of the mortgagee who had obtained a simple money decree. A Bench of this Court held that he was entitled to partition notwithstanding the provisions of section 99. It is true that in that case the Revenue Court had already overruled the objection that the property could not be sold and had confirmed the sale. Nevertheless it is quite clear that if the sale was a nullity, the plaintiff would have acquired no title to the share upon which he based his right to partition. It is true also that the plaintiff in this case was not the mortgagee, but section 99 restrains the mortgagee from "bringing the property to sale." If any act is rendered illegal it is the "bringing of the property to sale."

In the case of *Muhammad Abdul Rashid Khan v. Dilsukh Rai* (2) the mortgagees had brought the equity of redemption to sale in execution of a simple money decree for mesne profits and

(1) (1896) 1. L. R., 16 All. 325.

(2) (1905) 1. L., 27 All. 517.

costs and purchased it themselves. The plaintiffs brought their suit to redeem the property treating the sale to and purchase by the mortgagees as a nullity. A Bench of this Court was of opinion that the sale was not a nullity. The sale in this case was apparently before the passing of the Transfer of Property Act. But it seems a clear authority for the proposition that if the mortgagor allows the equity of redemption to be sold and the sale confirmed without objection, he cannot later on take exception to it.

In the case of *Mangli Prasad v. Pati Ram* (1) the question arose as to whether or not the plaintiff had a right to redeem a subsequent mortgagee. His claim was based on purchase at an auction sale of the equity of redemption in execution of a simple money decree obtained by a mortgagee. A Bench of this Court held him to be entitled. The Court was clearly of opinion that the auction sale was not a nullity.

Again in the case of *Madan Makund Lal v. Jamna Kaulapuri* (2) a Bench of this Court laid it down that where a sale has been had of mortgaged property in execution of a simple money decree and the sale confirmed, the title of the auction purchaser becomes complete. In a case reported in I. L. R., 30 All., 146, exactly the same view was taken.

A contrary view seems to have been taken by DILLON, J. in the case of *Jhabba Lal v. Chajju Mal* (3), but the case of *Tara Chand v. Imdad Husain* (4) and the cases reported in Volume I and Volume II of the Allahabad Law Journal do not seem to have been brought under the notice of the learned Judge. It seems to me that with the exception of this last mentioned case, and another recent decision to which I shall presently refer, all the decisions of this Court have been in favour of the view that the sale, at the instance of a mortgagee, of mortgaged property is not a nullity, and that if no objection is taken before the confirmation such objection cannot be taken later.

In the case of *Sardar Singh v. Ratan Lal* (5) the facts were as follows:—Nandan Singh executed a mortgage in favour of

(1) (1904) 1 A. L. J., 360.

(3) (1907) 4 A. L. J., 737.

(2) (1898) 2 A. L. J., 123.

(4) (1898) I. L. R., 18 All., 315.

(5) (1914) I. L. R., 36 All., 516.

1915

LAL BAHADUR SINGH
 v.
 ABHARAN SINGH.

Ratan Lal. Ratan Lal sued in 1898, but only asked for a simple money decree, which was granted. In execution of this decree he purchased the property himself. The sons of Nandan Singh were not made parties to the suit in which the decree had been obtained and they then brought a suit to redeem the mortgage and get possession. A Bench of this Court was of opinion that the plaintiffs were entitled to redeem. With regard to this case I can only say that I consider that in cases governed by section 99 the restrictions on a mortgagee acquiring the equity of redemption ought to be confined to the provisions of the section, and that in future the substituted provisions of the Code of Civil Procedure should regulate the rights of mortgagors and mortgagees in this respect. If, however, the learned Judges who decided the case of *Sardar Singh v. Ratan Lal* (1) intended to decide that a sale in contravention of section 99 was, even after confirmation, a complete nullity, such a decision was contrary to the cases previously decided in this High Court with the exception of the one case I have already mentioned. While I admit that the question is not free from difficulty, I think we ought not, without grave reason, to depart from a series of rulings of this High Court, and for this reason I do not intend to refer to the rulings of the other High Courts at any great length.

The case of *Ashutosh Sikdar v. Behari Lal Kirtania* (2), was a reference to the Full Bench of the Calcutta High Court. The questions were (1) whether, when a sale has been held in contravention of the provisions of section 99 of the Transfer of Property Act, the sale is a nullity or an irregular and voidable sale, and (2) whether the right of redemption of the mortgagor is or is not affected by such sale. RAMPINI, A. C. J., said in answer to the first question :—

“ I think we must, after the expression of opinion of their Lordships of the Privy Council in *Khairajmal v. Daim*, (3) reply that a sale held in contravention of the provisions of section 99 of the Transfer of Property Act is not a nullity, but an irregular and voidable sale. In my opinion such a sale can be avoided before confirmation of sale by an application under section 244 of the Code of Civil Procedure without its being necessary for the applicant to show more than that the provisions of the Transfer of Property Act have been contravened. But after confirmation the sale can only be avoided by an application under

(1) (1914) I. L. R., 36 All., 516. (2) (1903) I. L. R., 35 Calc., 61

(3) (1904) I. L. R., 32 Calc., 296.

section 244, provided that the applicant proves that owing to fraud or other reasons he was kept in ignorance of the sale proceedings preliminary to sale.

"The case should therefore be remanded to the Subordinate Judge to be disposed of after enquiry into these matters and after decision of any other issues that may arise in the case. The costs will abide the result.

"It seems neither necessary nor advisable for us to answer the second question put by the referring Bench."

It seems to me the reason why the learned Acting Chief Justice did not answer the second question was that the answer to the first question answered the second unless the applicant should prove that he was kept in ignorance of the sale proceedings preliminary to the sale.

BRETT, MITTRA and WOODROFFE, JJ., all agreed. MOOKERJEE, J., referred, in a more elaborate judgement, at length to the various rulings on the question, but I have no reason to think that he intended to differ from the other members of the Bench.

It is true that WOODROFFE, J., was party to a subsequent decision in the case of *Pancham Lal Chowdhury v. Kishan Pershad Misser* (1). With great respect I must confess to be quite unable to reconcile the two decisions. It seems to me that if the equity of redemption is sold in execution of a decree and purchased either by a third party, or by a mortgagee with the leave of the court, the equity of redemption is transferred from those persons who previously held it, to the purchaser and that the result is that if that sale is neither void nor set aside, there is no longer a right to redeem left in the previous owners of the equity of redemption. On the whole, I see no sufficient reason for overruling the previous decisions of this High Court, and I would, therefore, allow the appeal, stating at the same time, though it is perhaps hardly necessary to do so, that we express no opinion on the question whether the plaintiffs have ex-proprietary rights in the *sir* lands. The claim clearly is not a matter for the Civil Court.

BANERJI, J.—I am entirely of the same opinion and have very little to add. The learned vakil for the respondents laid considerable stress on the fact that the plaintiffs were no parties to the suit in which the decree against Amir Singh was obtained, in execution whereof the equity of redemption in the property in question was put up for sale and purchased by the mortgagee.

1915

LAL BAHADUR SINGH
v.
ABHARAN SINGH.

1915

LAL BAHADUR SINGH
 v.
 ABHARAN SINGH.

In the recent rulings of this Court and of their Lordships of the Privy Council, it has been held that in the case of a joint Hindu family the manager of the family represents the whole family. The present plaintiffs must, therefore, be deemed (if they existed at the time) to have been represented by Amir Singh in the suit which was brought against him, and they were thus parties to that suit. As the learned Chief Justice has observed, the plaintiffs cannot claim a higher title than that which Amir Singh could have set up in respect of the mortgage made by him. If Amir Singh could not maintain the present suit, no more can the plaintiffs.

This leads to the question whether by reason of the provisions of section 99 of the Transfer of Property Act, the auction sale at which Rani Dharam Raj Kunwar purchased the equity of redemption was a nullity. As has been pointed out by the learned Chief Justice, the course of rulings in this Court has been that such a sale is merely voidable, and not having been avoided before confirmation it binds the mortgagor and those whom he represented as the manager of the joint family. I deem it unnecessary to refer to those rulings. The only case in which a contrary view was held was that of *Jhabba Lal v. Chajju Mal* (1), decided by Mr. JUSTICE DILLON. With all respect I am unable to agree with him.

The next case on which the learned vakil for the respondents relies is the recent ruling in *Sardar Singh v. Ratan Lal* (2). In that case Mr. JUSTICE RAFIQ distinguished the cases reported in I. L. R., 18 All., 325, I. L. R., 27 All., 450 and I. L. R., 30 All., 146, on the ground that the sale in those cases was not in favour of the mortgagee but in favour of a third party. With great deference I fail to see any distinction between the case of a purchase by the mortgagee and that of a purchase by a third party. What the section declares is that a mortgagee shall not be entitled to bring to sale the equity of redemption of his mortgagor in execution of any claim which he may have whether arising under the mortgage or not. It does not prohibit the purchase of the property by the mortgagee, if the court permits him to purchase it and allows a sale to take place. If section 99 does not render a sale in violation of the section absolutely null and void, there is

(1) (1907) 4 A. L. J., 737.

(2) (1914) I. L. R., 36 All., 516.

nothing to prevent a mortgagee purchasing under such a sale with the leave of the court. It has been held by their Lordships of the Privy Council that a mortgagee who purchases with the leave of the court is exactly in the same position as any other purchaser. Therefore the fact of the purchaser being a person other than the mortgagee, in my opinion, makes no difference so far as the application of section 99 is concerned. The learned Judges in that case do not, as it seems to me, go the length of holding that a sale in contravention of section 99 is absolutely void. If that is so, and if such a sale is only voidable, it not having been avoided before confirmation, the title of the mortgagor or of those whom he represents, or of those who derive title from him passes absolutely to the purchaser and no right remains in those persons by virtue of which they can claim redemption.

TUDBALL, J.—I concur.

By THE COURT.—The order of the Court is that the appeal is allowed and the plaintiffs' suit is dismissed with costs in all courts.

Appeal decreed.

APPELLATE CIVIL

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

RENKA AND ANOTHER (DEFENDANTS) v. BHOLA NATH (PLAINTIFF)
AND NANNHU MAL AND OTHERS (DEFENDANTS)*

Hindu law—Hindu widow—Rights of widow in respect of the property of her deceased husband.

A Hindu widow in possession as such of her husband's estate is not liable to account to anyone; but is at liberty to do what she pleases with the property during her life-time provided only that she does not injure the reversion.

THIS was a suit by a person claiming to be the next reversioner to the estate of one Sewa Ram, on the death of his widow Musammat Renka. The defendants were the widow herself and certain nephews of hers to whom the widow was alleged to have granted a lease of a large amount of the property at a very low rent. The plaintiff claimed to treat this lease as an act of waste committed by the widow and asked for various reliefs; principally that the lease should be cancelled and he himself appointed

1915

LAL BAHADUR SINGH
v.
ABHARAN SINGH.

1915
January, 13

* First Appeal No. 148 of 1913, from a decree of Banke Bihari Lal, Additional Subordinate Judge of Aligarh, dated the 25th of March, 1913.