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tiffs had a cause of action arising out of a decree which was passed by this Court for specific performance and out of the conveyance which followed upon that decree.

The result, therefore, is that we affirm the decision of the court below and dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Lindsay and Mr. Justice Kanhaiya Lal.

DALIP SINGH (PLAINTIFF) v. KHURSHED HUSAIN (DEFENDANT).*

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June, 1.

Act (Local) No. IV of 1912 (Court of Wards Act), sections 37, 45—Property of disqualified proprietor retained after death of owner—Position of successor as to debts incurred by him.

Where, on the death of a ward, the possession of the ward's property is still retained by the Court of Wards, the ward's successor is not disqualified from incurring any liability which might affect the property after the debts and liabilities due by the Court of Wards have been discharged.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. *Nihal Chand Vaish*, for the appellant.

Maulvi *Iqbal Ahmad*, for the respondent.

LINDSAY and KANHAIYA LAL, JJ. :—This appeal arises out of a suit brought by the plaintiff (appellant) for the recovery of money due on account of cloth supplied to and money borrowed by the defendant. The defence, so far as it is material for the purpose of this appeal, was that the defendant was, at the time of the alleged transactions, a ward of the Court of Wards and, therefore, incompetent to enter into a contract, to make him pecuniarily liable under section 37 of the Court of Wards Act.

The court of first instance decreed the claim; but the lower appellate court set aside the decree. The view taken by the court of first instance was that the defendant was a ward as regards the property which he had inherited from Musammat Ahmadi Begam, but was not a ward as regards the property which he owned in his own right. The lower appellate court, however, held that he was a ward with respect to both the properties.

It appears that Musammat Ahmadi Begam was the owner of certain property, the superintendence of which was taken over by the Court of Wards on the 22nd of August, 1911. She

* Second Appeal No. 268 of 1921, from a decree of E. R. Neave, District Judge of Meerut, dated the 22nd of December, 1920, reversing a decree of P. K. Roy, Subordinate Judge of Meerut, dated the 15th of May, 1920.

died in 1913, leaving certain heirs, one of whom was the defendant. The Court of Wards retained the property of Musammat Ahmadi Begam under its superintendence under section 45, because the debts due by the deceased had not been till then discharged. The property was eventually released on the 7th of June, 1918. The debts, now in question, had been incurred by the defendant between the 24th of September, 1916 and the 30th of December, 1916. Section 45 of Act IV of 1912 lays down that—

“When a ward dies before the liquidation is completed of the debts and liabilities with which the property is charged, the Court of Wards may either release such property or may retain it under its superintendence until such debts and liabilities have been discharged.”

It further declares that—

“If the Court of Wards retains the superintendence, the person who has succeeded to the property shall not be competent to transfer or create any charge on, or interest in, any part of such property while it remains under the superintendence of the Court of Wards, nor shall any debts or liabilities, previously incurred by any person who has so succeeded, be chargeable on such property until the debts and liabilities due by the Court of Wards have been discharged.”

It does not disqualify such a successor from incurring any liability which might affect the property after those debts and liabilities have been discharged.

Section 37 has no application because that section is applicable in terms to wards, as defined by section 3. A ward is a *disqualified* proprietor whose person or property or any part of whose property is under the superintendence of the Court of Wards. The disqualification is declared under section 8. The defendant was never so declared. He made no application under section 10. The property inherited by the defendant from Musammat Ahmadi Begam was under the superintendence of the Court of Wards; but only for a specific purpose, namely, for the discharge of the debts and liabilities which were due by Musammat Ahmadi Begam at the time when the estate was taken over under its superintendence by the Court of Wards. After these debts were discharged and the estate was released, any liability incurred by the successors of the lady might be enforceable, except in so far as that liability creates a charge on the property which was under the superintendence of the Court of Wards while such debts and liabilities had remained undischarged.

The view taken by either of the courts below cannot, therefore, be upheld. The defendant was not a ward of the Court, so as to disqualify him from entering into a pecuniary obligation of a kind not forbidden by section 45, that is of the

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nature of a simple money debt or liability, not amounting to a charge on any portion of the property which was under the superintendence of the Court of Wards.

In the lower appellate court no other plea was pressed. We allow the appeal accordingly and, setting aside the decree of the lower appellate court, restore that of the court of first instance with costs.

Appeal decreed.

Before Mr. Justice Stuart and Mr. Justice Kanhaiya Lal.

AMBA PRASAD (PLAINTIFF) v. WAHID-ULLAH AND OTHERS
 (DEFENDANTS).*

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 June, 2.

Act No. IV of 1882 (*Transfer of Property Act*), section 82—*Mortgage—Integrity of mortgage broken up—Parts of the mortgaged property purchased by prior and subsequent mortgagees—Rights of purchasers inter se.*

Where the integrity of a mortgage is broken, a mortgagor who owns a part of the equity of redemption can redeem his own part; but where the rights of the mortgagor have vested partly in a prior mortgagee and partly in a subsequent mortgagee, as a result of a suit brought by each of them to enforce his mortgage without impleading the other, neither the former can be compelled to redeem the whole nor can he compel the latter to give up his interest in the share of the mortgagor which he has acquired.

THE facts of this case are fully stated in the judgment of the Court.

Mr. B. E. O'Connor, Dr. Surendra Nath Sen and Munshi Narain Prasad Ashthana, for the appellant.

Maulvi Iqbal Ahmad, for the respondents.

STUART and KANHAIYA LAL, J.J. :—This appeal arises out of a suit brought by the plaintiff (appellant) for the redemption of a two-thirds share of Katra Gulab Singh situated in Kashmiri Bazar, Agra. The Katra originally belonged to Dhumi Singh, who left three sons, Jwala Prasad, Bhawani Shankar and Debi Shankar. On the 28th of November, 1877, these three brothers mortgaged two stables and a house situated in Katra Gulab Singh in favour of Sukhdeo Rai. The mortgage was simple. On the 6th of March, 1878, the three brothers mortgaged the said Katra Gulab Singh with other properties with possession in favour of Sheikh Abdullah. On the 30th of May, 1878, two of them, Bhawani Shankar and Jwala Prasad, mortgaged their two-thirds share of Katra Gulab Singh in favour of Durga Prasad.

On the 15th of August, 1879, Sukhdeo Rai sued on his

* Second Appeal No. 1149 of 1920, from a decree of T. K. Johnston, District Judge of Agra, dated the 22nd of July, 1920, reversing a decree of Kaleshar Nath Rai, Subordinate Judge of Agra, dated the 3rd of August, 1918.