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decree, nor in execution of a decree arising out of the mortgage which is the subject of the present suit. That decree itself was a decree for sale on foot of a mortgage and obtained, as observed by their Lordships in *Khairaj-mal* v. *Daim* (1), " on accounts taken, and with the other safeguards usual in a suit on the mortgage." It was a suit for sale of the equity of redemption by a subsequent mortgagee, a suit well recognized in these provinces except during the period during which the rule laid down in the case of *Mata Din Kasodhan* v. *Kazim Husain* (2), prevailed in this Court. The facts of the present case are, in our opinion, similar to those of *Parmanand* v. *Daulat Ram* (3), with this difference that sale of an equity of redemption is now held to have been contemplated by the Transfer of Property Act. The learned Chief Justice, Sir JOHN STANLEY, and Mr. Justice BANERJI held in that case that the sale (like the one of 1881 in this case), having been the outcome of a suit under section 67 of the Transfer of Property Act (No. IV of 1882), did not offend against section 99 of the Act.

The appeal fails and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Boys and Mr. Justice Kendall.

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March, 23.

NAND KISHORE (DEFENDANT) *v.* RAM SARUP (PLAINTIFF).*

Act No. IV of 1882 *(Transfer of Property Act), section* 36*—Purchase at auction of zamindari property—Possession delayed—Collection of rents by judgement-debtor—Method of apportioning collections between judgement-debtor and auction-purchaser.*

Plaintiff, on the 20th of February, 1919, became the purchaser at an auction-sale held in execution of a decree of some

* Second Appeal No. 1294 of 1924, from a decree of Ganga Nath, Additional Subordinate Judge of Moradabad, dated the 16th of May, 1924, modifying a decree of Banwari Lal, City Munsif of Moradabad, dated the 11th of January, 1923.

(1) (1904) L.R., 32, I.A., 23; I.L. R., 32 Calc., 296. (2) (1891) I.L.R., 13 All., 432.

(3) (1902) I.L.R., 24 All., 549.

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zamindari property. He did not, however, get possession until some time in June, 1919, and meanwhile the judgement-debtor had made certain collections on account of the *rabi* of 1919.

Held, on suit by the auction-purchaser to recover from the judgement-debtor his proportionate share of the moneys collected, that the rights and liabilities between the plaintiff and the defendant should have been determined on the basis of the total *rabi* rent and the number of days in the *rabi* season, the defendant being given credit for a proportion of the *rabi* rent based on the number of days which fall within the period of his lawful possession, and the plaintiff being credited with a share of the *rabi* rent based on the number of days between the date of his purchase and the date on which the *rabi* rent fell due.

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

Munshi *Narain Prasad Ashthana*, for the appellant.

Babu *Piari Lal Banerji*, for the respondent.

BOYS and KENDALL, JJ. :—There was a decree against the defendant, who is appellant here, as a result of which the property was put up for sale, and on the 20th of February, 1919, the plaintiff purchased it. He did not get possession till some time in June, 1919. The defendant made certain collections on account of the *rabi* of 1919. The plaintiff, therefore, was entitled to be recouped something by the defendant, and the only difficulty that has arisen in this case has been on what basis he was entitled to recover.

The plaintiff having purchased the property on the 20th of February, 1919, and the *rabi* rent falling due on the 1st of May, 1919, by section 36 of the Transfer of Property Act " all rent upon the transfer of the interest of the person entitled to receive such rent shall be deemed, as between the transferor and transferee, to accrue due from day to day and to be apportionable accordingly, but to be payable on the days appointed for the payment

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thereof." The *kharif* and *rabi* payments were due in a proportion of 10 annas in the rupee on the 1st of December and 6 annas for the *rabi* on the 1st of May in each year. The amount, then, the plaintiff would be entitled to receive would vary according as the divisible unit be taken to be the whole rent for the whole year or the *rabi* portion of the rent for the *rabi* season of the year. The case first came before a Single Judge of this Court, who, the point being arguable and without authority upon it, referred it to a Division Bench, as it was a case which must arise again frequently in the future and govern important interests. The question has been argued afresh before us, and we are still without the assistance of any authority upon the point. We have, therefore, merely to determine which, in view of section 36 and the general circumstances of such a case, is the most appropriate method of dividing the rights and liabilities.

It is at the outset clear that there is a sharp and easily determined demarcation between the proportions of rent paid for the various seasons, at any rate in the present case. About this there can be no dispute. The rent was divisible into 10 annas and 6 annas, and no tenant could claim that his payment of the 10 annas should be postponed until such period as the whole 16 annas might be due.

Similarly, the division of the year into the *kharif* and *rabi* seasons is sharply demarcated by the fixed dates on which payments for these respective seasons are to be made. There is, therefore, no difficulty whatever in determining the rights and liabilities on the basis of the *rabi* season and the *rabi* rent.

If, on the 30th of November or the 1st of December, a tenant had paid up his full 10 annas for the *kharif*, what could be the rent which was gradually accumulating against him from day to day? It can surely only be the

daily proportion of the *rabi* rent. This is exactly the term which is used in section 36 of the Transfer of Property Act, which lays down as the basis the rent daily accruing.

That this is the correct view finds support if the question is regarded from another aspect which we may illustrate by an example. If the rent accruing from day to day is to be held to be the daily proportion of the total annual rent, and the total annual rent is Rs. 160, the rent accruing from day to day is Rs. 160/365. The *kharif* season (May to November) is 214 days, and on the annual basis the rent accrued during the *kharif* period would be Rs. 160/365 × 214, approximately Rs. 94, but the tenant has a defined liability to pay 10 annas of the total, i.e., Rs. 100. Similarly, on an annual basis the *rabi* liability would be approximately Rs. 66, while on his contract the *rabi* liability would be Rs. 60.

We are of opinion, therefore, that the rights and liabilities between the plaintiff and the defendant, the transferee and the transferor, should have been determined on the basis of the total *rabi* rent and the number of days in the *rabi* season, the defendant being given credit for a proportion of the *rabi* rent based on the number of days which fall within the period of his lawful possession, and the plaintiff being credited with a share of the *rabi* rent based on the number of days between the date of his purchase and the date on which the *rabi* rent fell due. In order to avoid a remand or remitting an issue in the case, we have discussed with counsel for the appellant and for the respondent the figures, and it is agreed that, on the basis already determined by this judgement, the defendant must be held entitled to Rs. 228 of the *rabi* rent Rs. 404. The amount of the collections which the defendant had made on account of *rabi* prior to the date when the *rabi* rent really became payable is Rs. 371. The plaintiff is, therefore, entitled to

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have from the defendant a sum of Rs. 143, plus interest from the date of his purchase to the date of realization from the defendant. Allowing the appeal and setting aside the decrees of the lower courts, we decree accordingly. The appellant will have his costs as already decreed in the trial court and the lower appellate court, and the defendant appellant here will have his costs of the appeal.

Appeal allowed.

Before Mr. Justice Sulaiman and Mr. Justice Banerji.

1927
April, 25.

MUNNI LAL (DEFENDANT) *v.* PHULA (PLAINTIFF) AND UDIT RAM AND ANOTHER (DEFENDANTS).*

Hindu law—Joint Hindu family—Partition between sons—Effect of pendency of partition proceedings on mortgage given by sons—Nature of mother's estate in property given to her on partition.

Pending proceedings for the partition of joint family property between the sons, the father being dead, the sons mortgaged a portion thereof. On the completion of the partition the portion mortgaged fell to the share of the mother.

Held, that the doctrine of *lis pendens* applied and the mortgage was not binding on the property in the hands of the mother.

Held also, that a mother at the time of partition has no share as a co-parcener. She is only entitled to maintenance, and if a share is given to her on partition, it is given to her by way of provision for her maintenance, and when the necessity for maintenance ceases, the property will revert to the estate from which it was taken. *Debi Mangal Prasad Singh* v. *Mahadeo Prasad Singh* (1), referred to.

THE facts of the case fully appear from the judgement of the Court.

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* First Appeal No. 234 of 1924, from a decree of Mirza Nadir Husain, Second Additional Subordinate Judge of Aligarh, dated the 25th of February, 1924.

(1) (1912) I.L.R., 34 All., 234.