

We consider, therefore, that the procedure of the lower appellate court was perfectly correct. No other ground of appeal has been taken in the memorandum. Accordingly we dismiss this appeal with costs.

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BARAMDEO  
PANDE  
v.  
DEBIDATT  
SINGH.

*Before Mr. Justice Mukerji and Mr. Justice Bennet.*

RANCHHOR AND OTHERS (DEFENDANTS) v. BANSIDHAR (PLAINTIFF) AND DURGA PRASAD AND ANOTHER (DEFENDANTS).\*

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*July, 4.*

*Bundelkhand Alienation of Land Act (Local Act II of 1903), section 16—Simple mortgage by member of agricultural tribe—Remedy by sale prohibited whether mortgage in favour of member of agricultural tribe or not—Simple money decree.*

Section 16 of the Bundelkhand Alienation of Land Act, 1903, bars any remedy by sale in enforcement of a simple mortgage by an agriculturist in favour either of an agriculturist or of a non-agriculturist.

In a suit for sale upon a simple mortgage executed by an agriculturist in favour of another agriculturist, the decree which could be granted was a simple money decree.

Dr. K. N. Katju, for the appellants.

Messrs. *Iqbal Ahmad and Shabbir Hasan*, for the respondents.

MUKERJI and BENNET, JJ.:—This is a second appeal by three defendants, who are transferees from a mortgagor. The facts are that on the 19th of February, 1916, Mst. Sarawan the mother and guardian of a minor, Tunde, executed a simple mortgage deed for Rs. 775 in favour of the plaintiff Bansidhar. Tunde died while he was a minor and his widow, defendant No. 1, Mst. Larhai *alias* Raja Beti executed a sale deed of her right to redeem in favour of defendants Nos. 2 to 5, the appellants before us. The plaintiff has brought a suit to enforce his simple mortgage

\*Second Appeal No. 196 of 1928, from a decree of Sarup Narain, Subordinate Judge of Jhansi, dated the 17th of November, 1927, modifying a decree of Shiva Shankar Lal, Munsif of Orai, dated the 16th of March, 1927.

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deed by sale. The court of first instance granted a preliminary decree under order XXXIV, rule 4, but stated that a final decree could not be granted because the property could not be sold owing to section 16 of the Bundelkhand Land Alienation Act. In first appeal the lower appellate court has ordered that defendants be given six months' time to pay the decretal amount, and if they do not do so within that period, the plaintiff will be entitled to recover the money by getting a temporary alienation of the mortgaged property from the court. The only point taken in second appeal by the transferees defendants is that this remedy granted by the lower appellate court is opposed to the Bundelkhand Land Alienation Act, and that the suit should have been dismissed because the civil court cannot grant any decree or give any direction affecting the landed property.

The argument in appeal before us is a very simple one,—whether section 16 of the Bundelkhand Land Alienation Act does or does not bar the remedy of a simple mortgagee to obtain sale of the mortgaged property. We have been referred to the Full Bench ruling of *Ram Sahai Singh v. Debi Din* (1), in which it was held that where a simple mortgage has been executed by one member of an agricultural tribe in Bundelkhand in favour of another member of an agricultural tribe, section 9 of that Act will not apply. This ruling was decided by a majority of two out of three Judges. The two Judges in the majority both stated that section 16 of that Act would bar the remedy by sale in execution of the simple mortgage decree. We were also referred to the case of *Kalika Prasad v. Ajudhia Prasad* (2). This was a case of a mortgage by conditional sale, and the remedy granted was foreclosure. That, however, has no direct bearing on the case before us, which deals with a simple

(1) (1926) I.L.R., 49 All., 8.

(2) (1929) I.L.R., 51 All., 780.

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mortgage. The learned counsel for the plaintiff invited our attention to certain remarks of one of the learned Judges in that case at pages 791 and 792, in which he repeated the view which he had held as a Judge in the minority in the Full Bench ruling mentioned above. In the present case the parties to the mortgage deed are both agriculturists. Some doubt has been raised in argument of the precise meaning and intention of various sections of the Bundelkhand Land Alienation Act. We consider that the scheme of this Act is as follows: Firstly, in regard to usufructuary mortgages and mortgages by conditional sale made by an agriculturist in favour of an agriculturist: No restraint is made on such mortgages by this Act. Secondly, in the case of usufructuary mortgages and mortgages by conditional sale made by an agriculturist in favour of a non-agriculturist: Section 6 of the Act lays down the restriction that the period for which the mortgagee will be entitled to hold possession is restricted to twenty years. Thirdly, in the case of simple mortgages by an agriculturist in favour either of an agriculturist or of a non-agriculturist: In both cases section 16 of the Act bars any remedy by sale in execution of a simple mortgage.

In regard to the view which was urged by the learned counsel for the plaintiff respondent that section 16 only barred a sale in execution in the case in which the mortgagee was a non-agriculturist, we consider that if that had been the intention of the Act, then a restriction on this class of mortgage where the mortgagee was a non-agriculturist would undoubtedly have been entered in section 6. The fact that there is no such restriction in section 6 leads us to conclude that section 16 is a perfectly general section applying both to agriculturists and to non-agriculturists, who are mortgagees on a simple mortgage.

For these reasons we allow this appeal, and we set aside the decree of the lower appellate court and

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we dismiss the suit of the plaintiff against the defendants Nos 2 to 5, appellants before us, with costs in all courts. The only remedy which we grant to the plaintiff is a simple money decree. As his suit is within time, the due date for payment under the mortgage being 1923 and the suit having been brought in 1926, the plaintiff is entitled to this simple money decree, and that money decree will be against the assets of Tunde, if any, which are in the hands of his widow Mst. Larhai, defendant No. 1. The costs will also be allowed to the plaintiff against these assets on this simple money decree.

### REVISIONAL CRIMINAL.

*Before Sir Grimwood Mears, Chief Justice, and Mr. Justice Sen.*

EMPEROR *v.* NANHUA DHIMAR AND OTHERS.\*

1930  
July, 9.

*Indian Penal Code, sections 366, 366A, 368, 372—Procurator of minor girl—Jurisdiction—Place of trial—Continuing offence—Abetment—Criminal Procedure Code, sections 180, 182.*

Unlike the offence of kidnapping from lawful guardianship, abduction is a continuing offence, and a girl is being abducted not only when she is first taken from any place but also when she is removed from one place to another. *Ganga Dei v. King-Emperor* (1) and *Sundar Singh v. Emperor* (2), approved. There is a close resemblance in the texts of sections 362 and 366A of the Indian Penal Code and some of the salient ingredients of the two offences are common, and it must be held that an offence under section 366A is also a continuing offence. So, under section 182 of the Criminal Procedure Code, an offence under section 366A can be inquired into or tried by a court having jurisdiction over any of the local areas in which the offence continues to be committed.

Accordingly, where, with the intent or knowledge specified in section 366A, two persons induced a minor girl to leave Moradabad and go with them to Hapur in district Meerut, where they were joined by two other persons, and the four of them took the girl to Hafizabad in the Punjab and there a fifth person joined them, and then all took her to Rampur in the

\*Criminal Reference No. 71 of 1930.

(1) (1914) 12 A.L.J., 91.

(2) (1924) 86 Indian Cases, 71.