

1882  
March 7.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

IMAMI BEGAM (DEFENDANT) v. GOBIND PRASAD (PLAINTIFF).\*

*Lease by usufructuary mortgagee of mortgaged property to mortgagor—Hypothecation of mortgaged property as security for rent—Suit for rent in Revenue Court—Suit for enforcement of lien in Civil Court—Act X of 1877 (Civil Procedure Code), s. 43.*

The usufructuary mortgagee of certain land granted a lease of such land to the mortgagor, the latter hypothecating the land as security for the payment of the rent. Arrears of rent accruing, the mortgagee sued the mortgagor for the same in the Revenue Court and obtained a decree. Subsequently the mortgagee sued the transferee of such land in the Civil Court to recover the amount of such decree by the sale of the land, claiming under the hypothecation. *Held*, following *Banda Hasan v. Abadi Begam* (1), that such claim was not barred by the provisions of s. 43 of Act X of 1877; that it could only be made through the medium of the Civil Court; and that the shape in which it was presented was perfectly regular.

THE plaintiff in this suit claimed to have it declared that a fifteen biswas share of a certain village was liable to be sold in execution of a Revenue Court decree for arrears of rent, on the ground that such share had been hypothecated as security for the payment of such rent. It appeared that on the 1st February, 1868, one Khalil-ul-lah Khan, the proprietor of the village mentioned above, gave a possessory mortgage of a fifteen biswas share of it to the plaintiff in this suit, Gobind Prasad. The interest payable to Gobind Prasad on the principal amount of the mortgage was fixed at Rs. 900. On the 3rd February, 1868, Gobind Prasad gave Khalil-ul-lah Khan a lease of such share at an annual rent of Rs. 900, the latter hypothecating such share as security for the payment of such rent. On the 26th April, 1870, Afzul-un-nissa, the wife of Khalil-ul-lah Khan, obtained a decree against him for possession of the village. On the 21st May, 1870, Gobind Prasad, who had sued Khalil-ul-lah Khan in the Revenue Court for arrears of rent due on the lease above mentioned, obtained a decree for such arrears. On the 9th August, 1870, Afzul-un-nissa gave Gobind Prasad a mortgage on the remaining five biswas of the village. On the 20th September, 1870, she gave the husband of Imami Begam, a defendant in this suit, a mortgage on the entire village. With the money advanced under this mortgage, she redeemed the mortgages to Gobind Prasad of the 1st

\* Second Appeal, No. 903 of 1881, from a decree of W. Young, Esq., Judge of Bareilly, dated the 9th April, 1881, affirming a decree of Maulvi Abdul Qayum Khan, subordinate Judge of Bareilly, dated the 26th November, 1880.

(1) I. L. R., 4 All. 186.

February, 1868, and 9th August, 1870. In May, 1874, she transferred the village to Imami Begam's husband, who transferred it to Imami Begam. In September, 1880, Gobind Prasad instituted the presentsuit against Imami Begam and the heirs of Khalil-ul-lah Khan in the Court of the Subordinate Judge of Bareilly, to establish his right to bring a fifteen biswas share of the village to sale in execution of the decree for arrears of rent which he had obtained against Khalil-ul-lah Khan in the Revenue Court on the 21st May, 1870. He claimed by virtue of such share having being hypothecated to him as security for the payment of the rent. The Subordinate Judge framed the following issue for trial, amongst others: "Whether after obtaining a simple decree for money from the Revenue Court, this claim for enforcement of hypothecation is valid or not?" Upon this issue the Subordinate Judge observed as follows:—"When a claim for enforcement of hypothecation cannot possibly be made in the Revenue Court, the fact of the plaintiff making no claim for enforcement of lien in the said Court, and of his not making any mention of his lien there, cannot be injurious to him. It has been ruled in several precedents that, after obtaining a simple money-decree from the Revenue Court, the plaintiff can claim enforcement of his lien in the Civil Court, just as a person, after obtaining a decree for rent from the Revenue Court, can legally sue the surety in the Civil Court." The Subordinate Judge in the event gave the plaintiff a decree as claimed, which the District Judge affirmed on appeal by the defendant Imami Begam.

In second appeal to the High Court by the defendant Imami Begam it was contended on her behalf that the suit was not maintainable, as the plaintiff had omitted in the former suit against Khalil-ul-lah Khan to claim enforcement of his lien on the hypothecated share; that a suit would not lie in the Civil Courts to enforce the execution of the decree of a Revenue Court; and that a suit for the enforcement of the plaintiff's lien, based on the decree in question, would not lie.

Munshi *Hanuman Prasad* and Mir *Zahur Husain*, for the appellants.

Mr. *Conlan* and the *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the respondent.

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The judgment of the Court (STRAIGHT, J., and TYRRELL, J.)<sup>1</sup> was delivered by

STRAIGHT, J.—It appears to us that a decision of a Division Bench of this Court in *Banda Hasan v. Abadi Begam* (1) is directly applicable to the present case, and as we no reason to dissent from the view therein expressed, we are of opinion that this appeal must be dismissed with costs.

*Appeal dismissed.*

## FULL BENCH.

1882  
March 8.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

JOGAL KISHOR AND ANOTHER (DEFENDANTS) v. TALE SINGH AND OTHERS  
(PLAINTIFFS).\*

BINDESHRI CHAUBEY AND ANOTHER (PLAINTIFFS) v. NANDU (DEFENDANT).†

*Suit to have a lease set aside and buildings erected by lessees demolished—Suit for possession of land and demolition of buildings erected thereon—Court-fees—Valuation of suit for the purposes of the Court-Fees' Act, 1870—Jurisdiction—Declaratory decree—Consequential relief—Act VII of 1870 (Court-Fees' Act), s. 7, art. iv, cl. iv.—Act VI of 1871 (Bengal Civil Courts' Act), ss. 20, 22.*

Certain co-sharers of a village sued to have a lease of certain land, the joint undivided property of the co-sharers, which the other co-sharers had granted, set aside, and to have the buildings erected on such land by the lessees demolished, on the ground that such lease had been granted without their consent, without which it could not lawfully be granted. They valued the relief sought at Rs. 100. The value of the buildings of which they sought demolition was Rs. 3,000.

*B* sued *N* claiming, *inter alia*, possession of certain land, and to have certain buildings erected thereon by the defendant demolished.

*Held*, with reference to the above mentioned suits, that in estimating their value for the purposes of the Court-Fees' Act, 1870, or of the Bengal Civil Courts' Act, 1871, the value of the buildings which might have to be demolished should not be taken into account.

*Held* by STRAIGHT, BRODHURST, and TYRRELL, JJ., with reference to the first suit, that it was one for a declaratory decree in which consequential relief was

\* Second Appeal, No 770 of 1880, from a decree of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 26th June, 1880, affirming a decree of Munshi Muhammad Sayyid Khan, Munsif of Mainpuri, dated the 16th August, 1878.

† Second Appeal, No. 197 of 1881, from a decree of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 21st July, 1880, reversing a decree of Maulvi Abdul Razak, Munsif of Deoria, dated the 19th March, 1880.

(1) I. L. R., 4 All. 180.