

1881

THE MAHA-  
RAJA OF  
BENARES  
v.  
BIBI DAYAL  
NOMA.

THIS was a reference to the High Court by Babu Ram Kali Chaudhri, Judge of the Court of Small Causes at Benares. The plaintiff in a suit instituted in that Court by H. H. Maharaja Ishri Prasad Narain Singh Bahadur, Maharaja of Benares, was not signed by the plaintiff, but was stamped with his name and title. The Judge was of opinion that, as the plaintiff was able to write, the plaintiff was not "signed" by him within the meaning of s. 53 of Act X of 1877, holding, with regard to the terms of s. 2, and more particularly with regard to the words "person referred to," that "signed" as defined in that section included "stamped" only when the person using the stamp could not write. Entertaining, however, some doubt on the point the Judge referred it to the High Court for decision.

Munshi *Hanuman Prasad*, for the plaintiff.

The defendant did not appear.

The judgment of the Court (OLDFIELD, J., and STRAIGHT, J.,) was delivered by

STRAIGHT, J.—We are of opinion that the word "stamped," as mentioned in s. 2 of Act X of 1877, is not limited in the manner suggested by the Judge of the Small Cause Court. We think that the expression "person referred to" means person referred to in the subsequent sections of the Code, as being required to sign or verify certain documents, and that it is not a condition precedent to such person being able to use a stamp that he should be unable to write his name.

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*Before Mr. Justice Oldfield and Mr. Justice Straight.*

HAZARI LAL (PETITIONER) v. KHERU RAI (OPPOSITE PARTY).\*

*High Court's powers of revision under s. 622 of Act X of 1877 (Civil Procedure Code)—Regulation XVII of 1806—Redemption of Mortgage.*

After a mortgage had been foreclosed under the provisions of Regulation XVII of 1806 the representative of the mortgagor deposited the mortgage-money in Court. The District Judge ordered that the money should be paid to the mortgagee on the ground that the mortgagor had not been personally served with the notice required by s. 8 of that Regulation, and that it did not appear that she had

Application, No. 9 of 1881, for revision under s. 622 of Act X of 1877 of an order of J. W. Power, Esq., Judge of Gházipur, dated the 4th January, 1881.

been aware of the foreclosure proceedings. The District Judge subsequently ordered the mortgagee, who was in possession of the mortgaged property under the terms of the mortgage, to surrender the property. The mortgagee applied to the High Court to revise these orders under s. 622 of Act X of 1877.

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*Held* that the application was entertainable under the provisions of that section, and that the orders of the District Judge were made without jurisdiction and should be set aside.

THIS was an application to the High Court for the exercise of its powers of revision under s. 622 of Act X of 1877. It appeared that in 1869 one Imaman Bibi had made a conditional sale to the applicant, Hazari Lal, of a certain share in a certain village. In 1873, the term of such conditional sale having expired, and the mortgage-money not having been paid, Hazari Lal applied to the District Court, under Regulation XVII of 1806, that such conditional sale might be made absolute. The notice required under that Regulation was issued, and in 1874, on the expiry of the year of grace, without the mortgage-money being deposited, such conditional sale was declared absolute. In 1880 Imaman Bibi sold her right in the property to one Kheru Rai, who deposited the mortgage-money in court, and applied to the District Court for redemption. Hazari Lal, who had been placed in possession of the property by the conditional vendor under the terms of the conditional sale, and was in possession of the same at the time of this application, preferred certain objections to the application. The District Judge ordered that the money should be paid to Hazari Lal, on the ground that the notice required by Regulation XVII of 1806, s. 8, had not been served on the conditional vendor, Imaman Bibi, personally, as required by that law, and that it did not appear that she had been aware of the proceedings to make the conditional sale absolute. With regard to the objections preferred by Hazari Lal, the District Judge remarked that his functions were merely ministerial and he need not notice such objections. The District Judge subsequently made an order directing Hazari Lal to surrender the property to Kheru Rai.

The present application was preferred by Hazari Lal for the revision of the District Judge's proceedings on the ground that he had acted without jurisdiction.

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Mr. Conlan, Pandit Ajudhia Nath, and Babu Jogindro Nath Chaudhri, for the petitioner.

The Senior Government Pleader (Lala Juala Prasad) and the Junior Government Pleader (Babu Dwarka Nath Banarji), for Kheru Rai.

The judgment of the Court (OLDFIELD, J., and STRAIGHT, J.) was delivered by

STRAIGHT, J.—Since giving the decision in application No. 27 B of 1880, decided the 10th June, 1880 (1), we have had an opportunity in Full Bench of further considering the operation of s. 622 of the Procedure Code, and we are of opinion that an application such as that now before us is entertainable under its provisions. It would be anomalous, indeed, if, when we found, as in the present instance, that a Judge, ostensibly acting under the Regulations relating to foreclosure, had passed an order or orders without jurisdiction, we should have no power to interfere and protect the party affected. In this case the order directing payment of the money to Hazari Lal, and the further one respecting delivery of possession of the mortgaged property, were altogether *ultra vires* and should have no force or effect. The Judge remarks that his functions are purely ministerial, and yet in the same breath he deals with the matter as if it were before him judicially. The proceedings in foreclosure were perfected in 1874, when the year of grace having expired and the mortgage-money not having been deposited, the mortgagor's right to redeem was gone. What remained for the mortgagee to do was to bring a suit for possession, the final and conclusive method of establishing his title if he was out of possession, or if in possession to sue for a declaration of his right. In either of those cases the mortgagor might have set up, by way of defence, that the foreclosure had been informally or irregularly determined, or that a sufficient deposit had been made, or that nothing was due; or he might have made all these matters ground for a suit by himself to set aside the mortgage proceedings. But of points such as these the Judge had no power to take cognizance when the application the subject of the present revision was before him, seeing that the year of grace had expired and the foreclosure order made.

(1) Unreported. Decided by Straight, J., and Oldfield, J.

In our opinion, it was altogether incompetent for him to receive the money, or direct its payment to Hazari Lal. As to the further order dispossessing the mortgagee, it was quite erroneous and without jurisdiction. This application must, therefore, succeed, and the two orders of the Judge hereinbefore mentioned must be set aside. The applicant will receive his costs.

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*Application allowed.*

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## APPELLATE CIVIL.

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 March 26.
 

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*Before Mr. Justice Oldfield and Mr. Justice Straight.*

RATI RAM AND ANOTHER (JUDGMENT-DEBTORS) v. CHIRANJI LAL  
 AND ANOTHER (OPPOSITE PARTIES).\*

*Sale in execution of decree—Separate sales in execution of decrees—Act X of 1877  
 (Civil Procedure Code), s. 295.*

Application was made for execution of a decree for money against *R*, and also for execution of a decree for money against *R* and another person jointly and severally. Certain immoveable property belonging to *R* was sold in execution of the first decree, the assets which were realized by such sale being sufficient to satisfy the amounts of both decrees. Such property was then sold a second time in execution of the second decree. *Held*, under these circumstances, that the second sale should be set aside, not being allowable with reference to the provisions of s. 295 of Act X of 1877.

ONE Tulsi Ram and one Karori Mal held a decree for Rs. 63-13-0 against one Rati Ram. One Chiranji Lal held another decree for Rs. 365-13-6 against Rati Ram and one Juala Singh jointly and severally. Rati Ram owned sixty-six bighas of land, and Juala Singh owned forty-five bighas; and the two persons owned 318 bighas in common. The whole of this property was separately attached and ordered to be put up for sale in execution of each of these decrees. The officer conducting the sales first put up to sale the sixty-six bighas of land belonging to Rati Ram and his interest in the land held by him and Juala Singh in common, in execution of the decree first mentioned, and the lot was knocked down for Rs. 435, a sum sufficient to satisfy both decrees. The officer then proceeded to put up for sale again in execution of Ohiranji Lal's

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\* First Appeal, No. 172 of 1880, from an order of Ahmad Husain Khan, Munsif of Nagina, in the District of Moradabad, dated the 19th July, 1880.