

Before Mr. Justice Pearson and Mr. Justice Oldfield.

RADHEY TEWARI (PLAINTIFF) v. BUJHA MISR AND ANOTHER
(DEFENDANTS).*

1881
January 4.

Mortgage—Foreclosure—Notice—“Legal Representative” of Mortgagor—Regulation XVII of 1806, s. 8.

The holder of a decree for money does not, merely because he has attached land belonging to his judgment-debtor while it is subject to a conditional mortgage, become the “legal representative” of the mortgagor within the meaning of s. 8 of Regulation XVII of 1806, and entitled to notice of the foreclosure of such mortgage; neither is the holder of a prior lien on land which is conditionally mortgaged the “legal representative” of the mortgagor and entitled to notice of foreclosure proceedings (1).

THE plaintiff in this suit claimed possession of a six-pie share of a certain village under a conditional sale which had been foreclosed. He claimed as against the conditional vendor and the persons, Bujha Misr and Thakur Misr, who had purchased such share at a sale in execution of a decree against the conditional vendor. The latter persons alone defended the suit. It appeared that before the 24th July, 1876, Bujha Misr and Thakur Misr had obtained a decree for money against the conditional vendor. On that date the conditional sale of such share was made to the plaintiff. On the 20th October, 1877, such share was attached in execution of the decree held by Bujha Misr and Thakur Misr. On the 1st May, 1878, the plaintiff applied to foreclose the conditional sale of such share under s. 8 of Regulation XVII of 1806. The notice required by that law was served on the conditional vendor on or about the 24th May, 1878. The share was put up for sale in execution of the decree held by Bujha Misr and Thakur Misr on the 20th January, 1879, and was purchased by them. They set up as a defence to this suit, *inter alia*, that they were entitled to notice of the application for foreclosure, as the share was under attachment in execution of the decree held by them, and that, as such notice had not been served on them, the foreclosure proceedings were invalid, and the suit was not maintainable. The Court of first instance disallowed this contention. The

*Second Appeal, No. 713 of 1880 from a decree of Hakim Rahat Ali Khan, Subordinate Judge of Gorakhpur, dated the 15th May, 1880, reversing a decree of Maulvi Nazar Ali, Munsif of Bansi, dated the 20th February, 1880.

(1) See also *Soobhu Chunder Paul v. Nitye Charn Bysack*, I. L. R., 6 Calc., 663, where it was held that an attaching creditor has not, as such, any right to redeem a mortgage subsisting prior to his attachment.

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lower appellate Court allowed it, having regard to the case of *Anundo Moyee Dossee v. Dhonendro Chunder Mookerjee* (1), and dismissed the suit.

On second appeal to the High Court the plaintiff contended that, as the equity of redemption of the share had not vested in the auction-purchasers at the time the application for foreclosure was made, they were not entitled to notice of such application, and the foreclosure proceedings were therefore not invalid by reason that such notice had not been given to them; and the case relied on by the lower appellate Court did not apply.

Lala Lalta Prasad, for the appellant.

Shaikh Maula Bakhsh, for the respondents.

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

PEARSON, J.—The appeal must prevail. The lower appellate Court's opinion that the defendants-respondents who had attached the property in suit, in execution of a simple money-decree which they had obtained on the basis of a simple bond (before the plaintiff, who held a mortgage thereof under a deed of conditional sale, took action under s. 8, Regulation XVII of 1806,) and purchased the same during the year of grace, were entitled to receive a notice of the application for foreclosure, and that, because they were not served with such notice, the foreclosure proceedings are defective and invalid, is altogether erroneous and is not supported by the authority of the Privy Council's decision to which the Subordinate Judge has referred.—*Anundo Moyee Dossee v. Dhonendro Chunder Mookerjee* (1). When the foreclosure proceedings commenced, the defendants-respondents were merely judgment-creditors under a simple money-decree who had attached their debtor's property and were not the legal representatives of the latter. It is alleged that the property had been hypothecated as security for the debt by a petition dated 10th July, 1871, although the lien was not declared by the decree in execution of which they attached and bought the property. If, for the sake of argument, we assume such to have been the case, we cannot admit that, even as prior lien-holders,

(1) 11 Moore's I. A., 101.

they were the legal representatives of Prag Singh, entitled to redeem the plaintiff's mortgage and to receive a notice of his foreclosure proceedings. All that can be said is that the property in question in the plaintiff's proprietary possession may be subject to that lien. Its validity may be considered when an attempt to enforce it is made. The defendants-respondents purchased eight pies out of which six are claimed by the plaintiff as the subject of the deed executed in his favour on the 24th July, 1876. He does not claim nor does the Court of first instance presumably award to him more than six pies. It is unnecessary to remand the case to the lower appellate Court. Decreeing the appeal with costs, we reverse its decree and restore that of the Munsif of Bansi.

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Appeal allowed.

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RUP KISHORE AND ANOTHER (PLAINTIFFS) v. MOHNI AND OTHERS
(DEFENDANTS).*

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January 4.

Bond payable on demand—Limitation—Act IX of 1871 (Limitation Act)—Act XV of 1877 (Limitation Act), s. 2.

Act XV of 1877, by making the period of limitation for a suit on a bond payable on demand computable from the date of its execution, has shortened the period of limitation prescribed for such a suit by Act IX of 1871 under which the period was computable from the date of demand. *Held*, therefore, that, under the provisions of s. 2 of Act XV of 1877, a suit on such a bond executed on the 14th December, 1869, having been brought within two years from the date that Act came into force, was within time.

THE plaintiffs in this suit claimed Rs. 590-6-9, being the principal amount and interest due on a registered bond, dated the 14th December, 1869, payable on demand, in which certain immovable property was hypothecated as collateral security. The plaintiffs claimed a decree directing the sale of the hypothecated property, and, in case that property was not sufficient to satisfy the judgment-debt, directing payment of the judgment-debt by the legal representatives of the deceased obligor and by the

*Second Appeal, No 714 of 1880, from a decree of Maulvi Sami-ul-lah Khan, Subordinate Judge of Moradabad, dated the 6th April, 1880, affirming a decree of Maulvi Anwar Hussain, Munsif of the Environs of Moradabad, dated the 30th September, 1879.