

1882
January 24.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

MAHTAB RAI AND OTHERS (DEFENDANTS) *v.* SANT LAL (PLAINTIFF)*

*Mortgage—Purchase by one of several mortgagees of a share of the mortgaged property—
Redemption by one of the mortgagors of his own share.*

The fact that one of several mortgagees has acquired the equity of redemption of the share of one of the mortgagors in the mortgaged property does not give another of the mortgagors the right to redeem his share in the mortgaged property. *Sobha Shah v. Indarjit* (1) distinguished. *Kuray Mal v. Puran Mal* (2) and *Nawab Azimul Ali Khan v. Jawahir Singh* (3) referred to.

THE material facts of this case were as follows:—Certain persons, named Baldeo Sahai and Muthra Das, mortgaged their shares in mauza Sadawalla, together with shares in other mauzas, by deed dated the 11th January, 1867, to certain persons, named Jawahir Singh and Khyrati, for Rs. 20,000. By arrangement between the mortgagees, Khyrati became entitled to the sole interest in this mortgage. He executed a deed, dated the 31st March, 1876, in favour of Sawai Singh and Kirparam, defendants in this suit, by which he assigned or sub-mortgaged (on this point the parties were not agreed) his interest as mortgagee to them for Rs. 20,000. Then Sawai Singh and Kirparam, by deed dated the 30th March, 1879, assigned or sub-mortgaged a moiety of their interests as mortgagees to the defendant Mahtab Rai for Rs. 10,000. It appeared that the rights of the mortgagors in portions of the mortgaged property were sold in execution of decrees and purchased by different persons, one of whom, Balikram, on the 21st September, 1874, in execution of a decree against one of the mortgagors, purchased his interests in mauza Sadawalla, and subsequently sold the same to Sant Lal, the plaintiff in this suit. Mahtab Rai also, subsequently to his obtaining an interest as mortgagee, purchased at auction-sale a share of one of the mortgagors in some of the mortgaged property, the sale being confirmed in April 1879. Thus, the original mortgagees came to be represented by Sawai Singh, Kirparam, and Mahtab Rai, and the last had purchased a

* Second Appeal No. 631 of 1882, from a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Moradabad, dated the 11th March, 1882, affirming a decree of Mir Akbar Husain, Munsif of Bijnor, dated the 28th July, 1881.

(1) I. L. R., 5 All. 149.

(2) I. L. R., 2 All. 565.

(3) 13 Moo. I. A. 404.

share of the mortgagors in the mortgaged property. The plaintiff, representing one of the mortgagors, brought the present suit to redeem his share, by paying a proportionate amount of the mortgage-debt; and the lower Courts gave him a decree. In second appeal the mortgagees, defendants, contended that the plaintiff was not entitled, under the circumstances of the case, to redeem a share of the mortgaged property.

Mr. Conlan, and Pandits *Ajudhia Nath, Bishambhar Nath and Nand Lal*, for the appellants.

The *Junior Government Pleader (Babu Dwarka Nath Banarji)* and *Babu Ratan Chand*, for the respondent.

The judgment of the Court (OLDFIELD and BRODHURST, JJ.), after stating the facts, and the contention of the appellants, continued as follows:—

OLDFIELD, J.—This contention is, in our opinion, correct. When the mortgagee has, or if there are more than one, all the mortgagees have, acquired the equity of redemption of a part of the mortgaged property, a mortgagor may redeem a share of the mortgaged property by payment of a proportionate part of the mortgage-debt—*Sobha Shah v. Indarjit* (1). But this is not such a case, for only one of several mortgagees has acquired a share of the mortgaged property. The case to which our attention was drawn—*Kuray Mal v. Puran Mal* (2)—was one of the former description, and following the ruling of the Privy Council in *Nawab Azimut Ali Khan v. Jawahir Singh* (3), it was held that, when the mortgagees bought the share of a mortgagor, one of the mortgagors was entitled to redeem his own share, but not that of another mortgagor against the will of the mortgagees. We reverse the decrees of the lower Courts, and dismiss the suit with costs.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

BISHUNATH (DEFENDANT) v. HAHN BAKHSII (PLAINTIFF)*

Civil Procedure Code, s. 17—Contract—Breach—“Cause of action”—Jurisdiction.

The expression “cause of action,” as used in s. 17 of the Civil Procedure Code, does not mean *whole* cause of action, but includes *material part* of the cause of action.

First Appeal No. 151 of 1832, from an order of A. Sells, Esq., Judge of Cawnpore, dated the 16th August, 1832.

(1) I. L. R., 5 All. 149.

(2) I. L. R., 2 All. 565.

(3) 13 Moo. L. A. 404.

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