

it. There was absolutely nothing in the contract to compel the plaintiff to pay the money into court if the person in whose favour the deposit was to be made unequivocally refused to take the money.

Both the appeals must be dismissed and dismissed with costs.

ADAMI, J.—I agree.

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Appeal dismissed.

APPELLATE CIVIL

Before Das and Adami, JJ.

MATHURA PRASAD SAHU

v.

DASAI SAHU*

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 ———
 January, 12.

*Transfer of Property Act, 1882 (Act IV of 1882), section 52—
 Lis pendens, whether doctrine of, applies to involuntary sale—
 mortgaged property sold for arrears of land-revenue pending suit on the
 mortgage, effect of—Bengal Land-Revenue Sales Act, 1859 (Act XI of
 1859) sections 13 and 54,*

The doctrine of *lis pendens* applies both to voluntary and involuntary sales.

Therefore, where, after a mortgagee had obtained a final decree on his mortgage, the right, title and interest of the mortgagor was sold for arrears of land-revenue, held, that the mortgagee who had purchased the property in execution of his decree subsequently to the sale for arrears of land-revenue was entitled to succeed in a suit for possession against the purchaser at the latter sale.

Har Sankar Prasad Singh v. Shew Gobind Shaw (1), approved.

The facts of the case material to this report were as follows:—

On the 24th February, 1905, Badri Narain executed a mortgage bond in favour of Dasai Sahu in respect of a 13-annas share in Manopur Gambhir. On the 4th August, 1906, he executed a bond in favour of

*Appeal from Original Decree No. 64 of 1912, from a decision of B. Rajeshwar Prasad, Subordinate Judge of Chapra, dated the 18th February, 1919.

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the same person in respect of a 9-annas 4-pies share in Manopur Gram, and on the 21st August, 1906, both the properties were again mortgaged to the same mortgagee. On the 26th March, 1914, the mortgagee obtained a preliminary decree on the mortgages and a final decree was passed on the 27th February, 1915. On the 4th June, 1915, the residuary share in Manopur Gambhir was sold for arrears of land-revenue and the right, title and interest of Badri Narain was purchased at that sale by Mathura Prasad Sahu. On the 10th February, 1916, Dasai Sahu purchased Manopur Gambhir in execution of his mortgage decree. Delivery of possession was obtained through the court on the 28th May, 1917. Having failed to obtain actual possession from Mathura Prasad Sahu who claimed Manopur Gambhir by virtue of the purchase at the sale for arrears of revenue. Dasai Sahu instituted the present suit. The suit was decreed.

The defendant appealed to the High Court.

Saroshi Charan Mitter and *Sambhu Saran*, for the appellants.

Kulwant Sahai and *Harnarain Prasad*, for the respondents.

DAS, J.—In my opinion the decision of the learned Subordinate Judge is right and ought to be affirmed. The facts shortly are as follows:—

In 1913 the present plaintiff instituted a suit, being suit No. 144 of 1913, against one Badri Narain on the foot of three mortgages executed by Badri Narain in favour of the plaintiff. These three mortgages were executed on the 24th February, 1905, 4th August, 1906, and 21st August, 1906, respectively. By the first bond a 13-annas share in Manopur Gambhir was mortgaged; by the second bond 9-annas 4-pies share in Manopur Gram was mortgaged, and by the third bond both the properties were mortgaged. On the 26th March, 1914, the plaintiffs obtained a preliminary decree and on the 27th February, 1915, they obtained the final decree.

It appears that on the 4th June, 1915, the residuary share in Manopur Gambhir was sold for arrears

of Government revenue and was purchased by the defendant. It is conceded that by such purchase the defendant acquired the right, title and interest of the judgment-debtor, that is to say, Badri Narain. On the 10th February, 1916, Manupur Gambhir was sold in execution of the mortgage decree and was purchased by the decree-holder. The plaintiff obtained delivery of possession on the 28th May, 1917, through court, but failed to obtain actual possession from the defendant who claimed title to Manupur Gambhir by virtue of his purchase at the sale for arrears of Government revenue.

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We are in this appeal concerned with the question whether the plaintiff as the auction-purchaser is entitled to recover possession of the property from the defendant who purchased the property at the sale for non-payment of Government revenue.

The first point that has been urged on behalf of the appellants is this. That the doctrine of *lis pendens* does not apply, and accordingly there is still a right of redemption in the defendant. The learned Vakil relied for his argument on the express language of section 52 of the Transfer of Property Act. That section runs as follows :

“During the active prosecution in any court having authority in British India, or established beyond the limits of British India by the Governor-General in Council, of a contentious suit or proceeding in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding, so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court, and on such terms as it may impose”.

The argument of the learned Vakil is this. That section 52, by the express language which has been adopted by the Legislature, only applies to a voluntary transfer and not to an involuntary transfer such as that which has taken place in this case and by which the defendant has acquired title to the property. It may be conceded that so far as the language of section 52 is concerned, it to some extent supports the contention of the learned Vakil, but having regard to the numerous cases which have been decided on the point, it is plainly impossible for us to encourage this argument at the

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present day. The authorities are all collected in Dr. Ghose's book on the Transfer of Property Act under section 52, and there is a case to which the learned Subordinate Judge refers, the case of *Har Sankar Prasad Singh vs. Shew Gobind Shaw* (1) which is an express decision against the contention of Mr. Mitter. That case was argued on one side by Dr. Rash Behary Ghose and on the other by Mr. Saroda Ch. Mitter. It may be assumed that whatever could be said was said, and Mr. Justice Ghose who delivered judgment in the case assumed that the doctrine would apply to an involuntary sale. But the learned Vakil says that there is a distinction between an execution sale and a sale for non-payment of Government revenue. I am unable to appreciate the distinction. In my opinion the view of the learned Subordinate Judge on this point is right and must be affirmed. The next argument is that the decree which was obtained by the plaintiff in the suit to which I have already referred was not a mortgage decree and that there was a right of redemption in Badri Narain and there is still a right of redemption in the defendant. The decree, however, is passed as a mortgage decree and it is impossible to hold now that the decree which was passed as a mortgage decree was in fact not a mortgage decree, but the contention of the learned Vakil is this: That the plaintiff brought one suit in respect of three mortgages and that it was incompetent to the learned Subordinate Judge to direct all the properties to be sold in default of payment by Badri Narain of the aggregate sum of money that was due to the plaintiff on all the mortgages. Now if that was so, I think that the only remedy which was available to Badri Narain at that stage was to appeal from that decree to the High Court, but that course was not adopted by Budri Narain. The court was the only court that could deal with the matter; it did deal with the matter and in my opinion it cannot be suggested that the court had no jurisdiction to pass the decree which in fact it did.

But the facts are not what they are stated to be by Mr. *Mitter*. We have looked into the decree which was passed by the learned Subordinate Judge and it seems to me that what the learned Subordinate Judge did in effect was to give the plaintiff three decrees on the foot of three mortgage bonds. The accounts were all directed to be taken separately; the mortgaged properties under each bond were specifically mentioned in the decree, and the learned Subordinate Judge directed that on default of payment by the mortgagor of the money due to the mortgagee on the taking of accounts, the mortgaged properties or a sufficient portion thereof should be sold. I take the decree to mean that upon default on the part of the mortgagor to pay the money due in respect of each bond, the properties covered by that bond would be sold. That seems to me to be the plain meaning of the decree that was passed by the learned Subordinate Judge. If that be so, then the question is at an end and the decision of the learned Subordinate Judge must be correct.

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The only other point is that the property did not belong to Badri Narain. According to the contention of the defendant, Badri Narain was one of three brothers, the other brothers being Thakur Prasad and Ram Nath and that the property was in fact purchased by Thakur Prasad. According to Mr. *Mitter* there was a separation between the three brothers and Babu Badri Narain had no title to mortgage the properties to the plaintiff. The evidence has been dealt with by the learned Subordinate Judge and though it is quite true that upon the death of Thakur Prasad his widow Rajo Kuer was for the time being registered as the owner of the property in question, still we cannot altogether ignore the civil suit which was instituted by Badri Narain and Ram Nath against Rajo Kuer nor can we ignore the consent decree which was passed by which Rajo Kuer admitted that the three brothers were joint and that the property belonged to the three brothers jointly. But it is urged that there was a subsequent suit by Rajo Kuer's daughter against Ram Nath and Badri Narain to recover possession of the property on

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the allegation that her father had purchased the property while he was separate from Ram Nath and Bunwari Lall. That suit, however, was brought after the decree was in fact obtained by the plaintiffs in this suit against Badri Narain and the decree which was obtained by Rajo Kuer's daughter is dated the 28th June, 1916. The learned Subordinate Judge holds, and I think rightly, that that was an entirely collusive suit in order to defeat the title of the plaintiff.

This appeal must be dismissed with costs.

ADAMI, J.—I agree.

Appeal Dismissed.

APPELLATE CIVIL.

Before Courts and Ross, J.J.

NAND LAL SAHU

v.

TIRAIT SRINIVAS HUKUM SINGH DEO. *

Adverse possession—service tenure, suit for resumption of—limitation—terminus a quo.

The mere fact that no service has been rendered to the grantor of a service tenure by the grantee for more than 12 years before the institution of a suit for resumption by the former is not sufficient to shew that the grantee, or transferees from him, have held the tenure adversely to the grantor from the time when service was last rendered.

Komargwada v. Bhimaja Keshav (1), approved.

Keval Kuber v. The Talukdari Settlement Officer and Gagubhai Abhesangji Talukdar (2), referred to.

Appeal by the defendant.

The facts of the case material to this report are stated in the judgment of Courts, J.

* Appeal from Appellate Decree No. 1130 of 1920, from a decision of A. D. Tuckey, Esq. Officiating Judicial Commissioner of Chota Nagpur, dated the 19th August, 1920, reversing a decision of Lala Tarak Nath of Ranchi, dated the 20th August, 1919.

(1) (1899) I. L. R. 23 Bom. 602.

(2) (1876-77) I. L. R. 1 Bom. 586.