

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Maung Ba.

KHOO JOO TIN

v.

MA SEIN.*

1928

Feb. 16.

Receiver of mortgaged property—Appointment usual when interest in arrears—Purchaser of mortgaged property and party to suit bound by such appointment—Act for the Improvement of Law Reports (Act XVIII of 1875)—Subordinate Court bound by decision of its own High Court.

Held, that a mortgagee who has filed a suit in respect of his mortgage is as a matter of course entitled to have a receiver appointed of the mortgaged property, if the interest is in arrears, and a purchaser of the property from the mortgagor and who has been made a party to the suit cannot object to such appointment, on account of the purchase.

A Subordinate Court is bound to follow a ruling of its own High Court which covers the case and it is entirely improper for such Court to follow a contrary ruling of another High Court and that too published in an unauthorized report.

A. C. Baroocha v. M.L.R. M.A. Chetty, 5 L.B.R. 135—followed.

Bhattacharya for the appellant.

HEALD and MAUNG BA, JJ.—In Civil Regular Suit No. 21 of 1926 of the District Court of Toungoo appellant sued her mortgagors to recover Rs. 4,500 for principal and Rs. 1,656-12-0 for interest by the sale of the property mortgaged to her under two mortgage bonds. She joined respondent as being the purchaser of the house and garden, which were mortgaged to her, at a Court auction held in execution of a simple money decree against her mortgagors. Her mortgagors admitted her claim and the Court gave her a preliminary mortgage decree for the sale of the mortgaged premises to recover a

* Civil Miscellaneous Appeal No. 176 of 1927 against the order of the District Court of Toungoo in Civil Miscellaneous No. 51 of 1927.

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sum of Rs. 7,564-7-0. That decree of course binds respondent.

Having obtained the preliminary decree appellant asked for the appointment of a receiver to collect the rents of the mortgaged premises. Respondent opposed the appointment of a receiver and the Court, on the strength of a decision of the Allahabad High Court, which was not officially reported, held that it had no power to appoint a receiver.

Its refusal to appoint a receiver was directly contrary to the law as laid down by the Chief Court of Lower Burma in the case of *Ahmed Cassim Baroocha v. M.L.R.M.A. Chetty* (1), and it should hardly be necessary to point out to Courts subordinate to this Court that where there is a ruling of the High Court of this Province which covers the case it is entirely improper for it to follow a contrary ruling of the High Court of another province. It should be even less necessary to draw the attention of the lower Court to the provisions of section 3 of Act XVIII of 1875.

Respondent was purchaser of the interest of appellant's mortgagors in the mortgaged premises and stood in the shoes of those mortgagors. Respondent was of course entitled to redeem the mortgage but so long as interest on the mortgage was in arrears she was not under the law as laid down in the above ruling in a position to oppose successfully an application for the appointment of a receiver.

It is clear that interest was heavily in arrears and the Court ought certainly to have appointed a receiver.

We therefore set aside the order of the lower Court and direct that the Bailiff of that Court be appointed receiver with power only to collect the

rents of the house and garden which are the subject-matter of appellant's preliminary mortgage decree.

Respondent will bear appellant's costs in the lower Court and in this Court. Advocate's fee in this Court to be two gold mohurs.

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ORIGINAL CIVIL.

Before Mr. Justice Chari.

RAHMAN & CO.

v.

MAUNG WAIK.*

1928

Feb. 16.

Statutory right created for benefit of individual or class—Right of injured individual to sue—Special statutory remedy when a bar to ordinary civil remedy—Rangoon Small Cause Courts Act (Burma Act VII of 1920), s. 35.

Where a statute creates a right, for example, in the form of a duty which public officer must perform for the benefit of an individual or of a class of individuals, and the statute at the same time provides a remedy for the breach of that duty, the presumed intention of the law is that the remedy is exclusive of ordinary remedies.

Held, that as s. 35 of the the Rangoon Small Cause Courts Act provides a special remedy (by way of application to the Chief Judge of the said Court) for the recovery of compensation in cases where a party finds himself unable to execute an order on account of a bailiff's breach of duty, the ordinary civil courts have no jurisdiction to entertain a suit for the same relief.

Halkar for the plaintiff.

A. Eggar and *E Maung* for the defendant.

CHARI, J.—This is a suit for the recovery of Rs. 2,279-8-0 against the Bailiff of the Rangoon Small Cause Court in the following circumstances:—

The plaintiff filed a suit in that Court for the recovery of Rs. 2,000, in respect of timber sold and delivered against one L. Shwe Main, (Civil Regular Suit No. 4493 of 1923). An *ex parte* decree was

* Civil Regular Suit No. 435 of 1926.