

the plaintiff in regard to imputations on his conduct towards other persons, but nothing tangible was established or even put forward against the plaintiff. Under these circumstances I see no reason why the plaintiff should not obtain the only relief which would really be of any use to him.

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Injunction granted.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.

MUSEIN AND OTHERS (ORIGINAL DEFENDANTS NOS. 4, 5 AND 6), APPELLANTS,
v. SHANKARGIRI GURU SHAMBHUGIRI AND OTHERS (ORIGINAL
PLAINTIFFS NOS. 1-3 AND DEFENDANTS NOS. 1-3, 7 AND 8), RESPOND-
ENTS.*

1898.
February 10.

*Mortgage—Money decree obtained by mortgagee—Execution—Sale of mort-
gaged property in execution—Purchaser at such sale—Title of such pur-
chaser—Transfer of Property Act (IV of 1882), Sec. 99.*

Previous to the passing of the Transfer of Property Act (IV of 1882) a mortgagee obtained a money-decree against his mortgagor and in execution sold the mortgaged property. The son of the mortgagee bought it at the sale.

Held, that by his purchase at the execution-sale the son took an absolute title and was not liable subsequently to be redeemed at the suit of the heirs of the mortgagor.

Martand v. Dhondo⁽¹⁾ distinguished.

Semle.—A third person purchasing mortgaged property *bonâ fide* at a sale in execution of a money decree obtained by the mortgagee against the mortgagor obtains a good title free from the mortgage lien, unless the sale is made subject to it.

APPEAL from a remand order passed by E. M. Pratt, District Judge of Sholâpur-Bijâpur.

Suit for redemption. The plaintiffs' father (Shankargiri) on the 23rd July, 1872, mortgaged the property in question to Nurudin, the father of defendants Nos. 1, 2, 3, 7 and 8 and grandfather of defendants Nos. 4, 5 and 6, who were the children of Pirshah, a deceased son of Nurudin.

Defendants Nos. 1, 4, 5 and 6 denied the plaintiffs' right to re-
deem. They pleaded that the mortgaged property had been sold

*Appeal, No. 38 of 1897 from order.

(1) (1897) 22 Bom., 624.

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in 1878 in execution of a money decree obtained by Nurudin (the mortgagee) against Shankargiri (the mortgagor), and that Pirshah, the son of Nurudin (the mortgagee), had purchased it; that the sale had been duly confirmed and Pirshah had got possession, and on his death his children (defendants Nos. 4, 5 and 6) had succeeded as his heirs. They contended that by the sale the mortgage was extinguished and the right of redemption gone.

The Subordinate Judge of Bārsi dismissed the suit, holding that the mortgage had been extinguished by the sale under the money decree obtained by the mortgagee.

On appeal by the plaintiffs the Judge reversed the decree. He held that under the provisions of the Transfer of Property Act (IV of 1882), section 99, the sale in 1878 was void, and he remanded the case for a finding as to what balance was due by them on taking account under the mortgage.

The Transfer of Property Act (IV of 1882) came into force on the 1st July, 1882, and was extended to Bombay in January, 1893. Section 99 of that Act is as follows:—

“99. Where a mortgagee in execution of a decree for the satisfaction of any claim whether arising under the mortgage or not attaches the mortgaged property he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section 67, &c., &c.”

Defendants Nos. 4, 5 and 6 preferred a second appeal.

Dattatraya A. Idgunji, for the appellants (defendants Nos. 4, 5 and 6):—The sale was valid and the right of redemption was extinguished. The Transfer of Property Act does not apply. The sale in question was in 1878 and the Act was not passed until 1882 and was not applied to this Presidency until 1893. It is not retrospective: see section 2; *Ambabai v. Bhan bin Rajaram* ⁽¹⁾. The Judge has relied on *Durgayya v. Anantha* ⁽²⁾, but that decision is not applicable. It has been found as a fact that Pirshah did not purchase *benami*, nor was there any fraud or collusion in the transaction. Pirshah obtained an absolute title by his purchase and has been in possession ever since—*Bhuggobutty Dossee v. Shamachurn Bose* ⁽³⁾.

There was no appearance for the respondents.

(1) P. J., 1895, p. 291.

(2) (1899) 14 Mad., 74.

(3) (1876) 1 Cal. 337.

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FARRAN, C. J. :—The District Judge was, we think, in error in applying the provisions of section 99 of the Transfer of Property Act to the solution of the appeal before him. The sale in execution at which Pirshah purchased, took place in 1878 long before the Transfer of Property Act came into operation in this Presidency—before it was even passed. The Act is not retrospective. Section 2 provides that “nothing herein contained shall be deemed to affect” * * “(c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability.” In *Durgayya v. Anantha* ⁽¹⁾, relied upon by the District Judge, the sale was after the Transfer of Property Act came into force in Madras.

In this case the original mortgagee Nurudin having obtained a money decree against his mortgagor put up the mortgaged premises for sale. They were purchased by Pirshah and it is expressly found that the latter did not purchase *benami* for Nurudin. This distinguishes the present case from *Martand v. Dhondo* ⁽²⁾, where the mortgagee himself purchased in the names of his servants and dependents at an undervalue and without the leave of the Court. That was the *ratio decidendi* there. It went as far as it was possible to go, and the principle deducible from it cannot be extended to the case of a third person purchasing *bonâ fide* at an execution sale held by the mortgagee. Such a sale confers a good title upon the purchaser, and that too we are inclined to think free from the mortgage lien, unless the sale is made subject to it—*Bhuggobutt, Dossee v. Shamachurn Bose* ⁽³⁾—but that question does not arise here.

Pirshah, therefore, obtained an absolute title to the property and is not liable to be redeemed at the suit of the plaintiffs, who represent the original mortgagor. The Subordinate Judge was, therefore, right in dismissing the suit when he found that Pirshah did not purchase *benami* for Nurudin, and the District Judge having agreed in that view ought not to have remanded the case.

Remand order reversed and decree of the Subordinate Judge restored with costs throughout on the plaintiffs.

Remand order reversed.

(1) (1890) 14 Mad., 74.

(2) (1897) 22 Bom., 624.

(3) (1876) 1 Cal., 337.