

## APPELLATE CIVIL.

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*Before Mr. Justice Macpherson, Officiating Chief Justice, and Mr. Justice Lawford,*

NATHOO SAHOO (DEFENDANT) v. LALAH AMEER CHAND  
(PLAINTIFF).\*

1875  
May 6.

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*Mortgage -- Redemption of a Portion of Mortgaged Property -- Purchase of Portion of Equity of Redemption by Mortgagee*

R mortgaged to N certain property, of which N caused a moiety to be sold in execution of a money-decree against R and himself became the purchaser. The other moiety was sold subject to N's mortgage in satisfaction of another decree, and purchased by L. N, in exercise of his rights as mortgagee, attached and proceeded to sell the share of L in the portion purchased by him, and L thereupon, with a view to stay the sale, deposited an amount proportionate to the share held by him. The sale, however, was allowed to proceed. Held in a suit brought by L against N to set aside the sale, he was entitled to a decree.

THE facts out of which this case arose were as follows:—Ragunath and Rajkumar mortgaged to the defendant Nathoo Sahoo certain properties, viz., an 8-anna share of Dahama, a 5-anna share of Moradpore, and the whole of Shamorah and Goura Sukti. Nathoo, the mortgagee, in execution of a money-decree against Ragunath and Rajkumar, caused one half of Moradpore to be sold, and himself purchased it. The other half was sold in satisfaction of a second money-decree obtained by another creditor, and was purchased in equal shares by Kesho Lal and Ragunath. Kesho Lal's interest subsequently passed to the plaintiff. The sales were made subject to Nathoo's lien under his previous mortgage. Nathoo then enforced his mortgage rights: he first sold 8 annas of Dahama, and afterwards proceeded to attach the shares of the plaintiff and Ragunath

\* Special Appeal No. 346 of 1874, against a decree of the Officiating Judge of Zillah Bhaugulpore, dated the 28th of November 1873, reversing a decree of the First Subordinate Judge of that district, dated the 15th of May 1873

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in the 5 annas of Moradpore. The plaintiff sought to stay proceedings in execution by depositing a fourth part of the amount of the decree, proportionate to his share. He failed in this, and the sale having taken place, he brought this suit to set aside the sale. Ragnunath likewise deposited his share of the debt due under the mortgage.

The first Court considered that the plaintiff's only remedy was in the execution proceedings. Having failed in that his proper course now was to satisfy the mortgagee's lien in the first instance and then to sue him for contribution.

On appeal, the Judge reversed the decree of the first Court and gave the plaintiff a decree. The defendant appealed to the High Court.

Baboo *Kalikisto Sen* for the appellant.—The depositing of a portion of the money due to the mortgagee was not sufficient to stay the sale of the mortgaged property; therefore the sale was good. The mortgagee holds the entire property as security for the entire debt—*Mirza Ali Reza v. Tarasoodere* (1), *Ram Kristo Manjhee v. Mussamat Ameeroonissa Bibee* (2), *Boodhoo Singh v. Kishen Chunder Ghose* (3), and *Mahtab Singh v. Misree Lall* (4); and separate proceedings in respect of portions of the debt are vexatious, and ought not be allowed.

Mr. *C. Gregory* for the respondent.—The deposit in this case was sufficient, because what was due by the defendant for the share sold under his own decree and purchased by him would make up the whole amount due on the mortgage. Under these circumstances the plaintiff is entitled to recover—*Mahtab Singh v. Misree Lall* (4) and *Bhairab Chundra Madak v. Nadyar Chand Pal* (5).

Baboo *Kalikisto Sen* in reply.—The Court that was executing the decree could not adjust the accounts and take a portion of the money due under the decree in satisfaction of the whole

(1) 2 W. R., 150.

(2) 7 W. R., 314.

(3) 3 W. R., Misc. 4.

(4) 2 Agra H. C., 88.

(5) 3 B. L. R., A. C., 357.

decree; therefore the Court was justified in selling, and if so the sale ought not to be set aside. Whatever questions might arise between the parties as to the liabilities of each could only be enquired into in a regular suit for contribution.

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The judgment of the Court was delivered by

MACPHERSON, J.—We think that the judgment of the lower Appellate Court ought to be affirmed. The point in issue has been expressly decided by the High Court of the North-West Provinces in the case of *Mahtab Singh v. Misree Lall* (1). In that case two mouzahs were mortgaged together, and the equity of redemption in one was subsequently sold in execution of a decree held by a stranger and was purchased by the mortgagee; and the equity of redemption in the other was in like manner sold under another decree and purchased by a third party; and it was held that the latter might redeem the property he had purchased on paying a proportionate part of the mortgage debt. We agree in the observations made in the judgment of the Court that “a mortgagee is entitled to say to each of several persons who have succeeded to the mortgagor’s interest, that he shall not be entitled to redeem a part of the property on payment of part of the debt, because the whole and every part of the land mortgaged is liable for the whole debt. But it does not follow from this that a mortgagee who has acquired, by purchase, a part of the mortgagors’s rights and interests, is entitled to throw the whole burden of the mortgage debt on the remaining portion of the equity of redemption in the hands of one who has purchased it at a sale in execution of a decree against the mortgagor. Each has bought subject to a proportionate share of the burden, and must discharge it.”

We see no reason why the equitable rule applied in that case should not be enforced as between the parties now before us,—the more especially as the person who purchased at the last sale and who complains of the decree which has been made is the mortgagee himself.

We therefore affirm the decree appealed against and dismiss this appeal with costs.

*Appeal dismissed.*

(1) 2 Agra H. C., 88.