

# The Weekly Reporter,

## APPELLATE HIGH COURT.

The 23rd August 1865.

*Present :*

The Hon'ble C. Steer and E. Jackson,  
*Puisne Judges.*

**Mortgage—Prior foreclosure of subsequent  
Mortgagee—Service of Notice of foreclo-  
sure.**

Case No. 1153 of 1865.

*Special Appeal from a decision passed by the  
Additional Principal Sudder Ameen of Dacca,  
dated the 2nd February 1865, affirming a deci-  
sion passed by the Moonsiff of that District,  
dated the 26th December 1862.*

Kalee Kishore Chatterjee (Defendant),  
*Appellant,*

*versus*

Tara Pershad Roy (Plaintiff), *Respondent.*

*Baboo Hem Chunder Banerjee and Bama  
Churn Banerjee for Appellant.*

*Baboo Dabendro Narain Bose for  
Respondent.*

The prior foreclosure of a subsequent mortgagee does not relieve the property of the lien upon it under the first mortgagee.

*Quere.*—Whether the second mortgagee is the mortgagor's legal representative for the purpose of the notice of foreclosure under Section 8, Regulation XVII. of 1866.

Where the first mortgagee had no knowledge or cognizance of the second mortgage or of the foreclosure proceedings taken under it, the second mortgagee has no just ground of complaint that the notice of foreclosure was served, not on him, but on the mortgagor.

THE first objection taken against the judgment is in regard to a tank and its banks. Both the Courts below have held that, while the north side and south side and the west side of the tank belong to, and are in possession of, the defendant, the east side belongs

to the plaintiff, and is in his possession. It is said that the Principal Sudder Ameen has found that the claim of the plaintiff to this tank is not established, but he has nevertheless decreed to the plaintiff the right and possession of the eastern bank, and has overruled the defendant's plea of limitation in regard to it. This is, however, a misapprehension, for, as already observed, the Principal Sudder Ameen has, without doubt, found that, while the plaintiff has failed to prove his title to three sides of the tank, he has proved his title to the east side, and his possession also.

The next objection is in regard to the decision arrived at by the Principal Sudder Ameen on the 11th issue, and in regard to this it is said that his order is inconsistent with his finding. It is so, certainly, but the inconsistency arises out of a palpable blunder in writing the word plaintiff for the word defendant in the concluding part of his decision on this issue.

The third objection refers to the mode in which the Lower Court has disposed of the question as to the respective rights of a prior and a subsequent mortgagee. It was first argued that a subsequent mortgagee, who had proceeded to foreclose his mortgage, could not be ousted by a prior mortgagee whose foreclosure was subsequent to his. But this contention was after a little time given up, and it was then urged that, admitting that the prior foreclosure of the subsequent mortgagee did not relieve the property of the lien upon it under the first mortgagee, still, inasmuch as by the act of the foreclosure the subsequent mortgagee became the representative of the mortgagor, the plaintiff, who represents the first mortgagee, should have recognized the *status* of the defendant who represents the subsequent mortgagee, and should have served the notice of foreclosure

upon him, and not on the original mortgagor, when he, having notice of the application to foreclose, would have had the option of paying off the first mortgage. Inasmuch, then, as the notice of foreclosure under the first mortgage was not on the defendant, the legal representative of the original mortgagor, it is contended that that mortgage has, in fact, not been foreclosed at all, and the present suit of the plaintiff for possession on the ground of foreclosure is untenable.

That the second mortgagee is the mortgagor's legal representative for the purpose of the notice under Section 8, Regulation XVII. of 1806, is not a settled point. But where, as in this case, it does not appear that the first mortgagee had any knowledge or cognizance of the second mortgage, or of the foreclosure proceedings taken under it, the objection is not valid that he ought to have served the notice on the defendant. He served it on the mortgagor, the party upon whom the law directs that it shall be served; and so far from there being any just ground for the defendant to complain in the matter, he has clearly neglected to look after his own interests. He should have known of the prior mortgage, and he should have kept himself informed if anything was done to foreclose the mortgage; but he did nothing, and if he has now lost his lien upon the property, he has brought that upon himself.

In this view, we think the judgment of the Lower Court, awarding possession to the first mortgagee, to be right and proper, and we dismiss the special appeal with costs.

The 23rd August 1865.

*Present :*

The Hon'ble H. V. Bayley and E. Jackson,  
*Puisne Judges.*

**Jurisdiction (of Civil Court)—Decision of incidental question of title by Revenue Court.**

Case No. 1284 of 1865.

*Special Appeal from a decision passed by the Principal Sudder Ameen of Jessore, dated the 17th February 1865, reversing a decision passed by the Moonsiff of that District, dated the 1st June 1863.*

Doss Monce Dossee (Plaintiff), *Appellant,*

*versus*

Huronath Roy and others (Defendants),  
*Respondents.*

*Baboo Bhowanee Churn Dutt* for Appellant.

*Baboo Bungsheedhur Sein* for Respondents.

The decision of a Revenue Court incidentally trying, for the purposes of a suit under Act X. of 1859, a question of title, is not final, so as to bar a suit in the Civil Court to establish a title declared by the Revenue Court to be invalid.

THE Principal Sudder Ameen is in error in the weight which he allows to the decision of a Deputy Collector under Act X. of 1859, incidentally trying, for the purposes of a suit under that Act, a question of title. The Principal Sudder Ameen considers such a decision final and conclusive, and that no suit founded upon a title declared bad by such a decision can be preferred in the Civil Courts. We think he is in error. The decision in question is good solely for the purposes of that suit; and the suit now preferred to establish the title declared by the Deputy Collector to be invalid must be heard and determined.

Principal Sudder Ameen's judgment reversed, and suit remanded for re-trial.

Costs to follow the result.

The 23rd August 1865.

*Present :*

The Hon'ble G. Loch and F. A. Glover,  
*Puisne Judges.*

**Different suits on different causes of action having common object.**

*Special Appeals from a decision passed by the Judge of Hooghly, dated the 18th February 1865, affirming a decision passed by the Principal Sudder Ameen of that District, dated the 30th May 1864.*

Case No. 1211 of 1865.

Messrs. R. Watson and Co. (Defendants),  
*Appellants,*

*versus*

Pokhur Doss Paul and others (Plaintiffs),  
*Respondents.*

*Messrs. R. T. Allan and J. S. Rochfort* for Appellants.

*Baboo Sreenath Doss and Onoocool Chunder Mookerjee* for Respondents.

Case No. 1391 of 1865.

Mohinee Dossee and another (Defendants),  
*Appellants,*

*versus*

Pokhur Doss Paul and others (Plaintiffs), and others (Defendants), *Respondents.*