

that if he had known that Kripomoye and Dhankristo had no right to the estate, he would have been guilty of the extreme folly of purchasing their interest.

We have not been able to find any evidence, nor has the pleader for the respondent been able to point out any, which would justify the supposition on which the Court below proceeded.

As there is, therefore, no question now as to the amount of rent due from the defendant, it is needless to remand the case. The judgment of the Court below must be reversed, and the plaintiff will be entitled to a decree for the rent admitted to be due to him, namely, Rs. 1,014-5-2, with costs in both Courts.

Appeal allowed.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

LALA KALI PROSAD (PLAINTIFF) v. BULI SINGH (DEFENDANT).*

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Sept. 11.

Purchaser pendente lite—Subsequent Decree by Mortgagee—Misdescription of Property.

Where a creditor obtains a decree against his debtor, and in execution puts up for sale, and himself becomes the purchaser of, certain property of his debtor, which is already under mortgage to another, and such other has, previous to the decree and sale, commenced a suit on his mortgage-bond (although such suit has not proceeded to a decree), such judgment-creditor purchasing *pendente lite* only obtains the right and interest of the mortgagor in such property, *viz.*, the equity of redemption, and does not acquire the property free from the incumbrance created by the debtor.

THE property in question in this suit was mortgaged by one Collis to Roghun Nath Sahoy under two mortgage-bonds, dated the 24th June 1872 and 26th February 1873.

On the 10th July 1874, Roghun Nath instituted a suit on his mortgage-bond, and on the 17th September 1874 obtained

* Appeal from Appellate Decree, No. 13 of 1878, against the decree of J. M. Lewis, Esq., Judge of Zilla Bhagulpore, dated the 5th of October 1877, affirming the decree of Moulvi Mahomed Nural Hosain, Munsif of that District, dated the 20th December 1876.

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a decree declaring his lien on the mortgaged property. This decree was subsequently executed, and at the auction-sale on the 23rd February 1875, the property in question was purchased by the defendant No. 2, who on the 15th April 1875 sold the property to the plaintiff.

Prior to this sale,—*viz.*, on the 7th September 1874,—the defendant No. 1, having no notice of any incumbrances on the property, obtained a decree against Collis, and in applying for execution of this decree, described the property he went against as being lakhiraj, it being in reality the very property which was covered by the mortgage-bond in the hands of Roghun Nath. The property was put up for sale, and was purchased by defendant No. 1 himself on the 7th December 1874. Afterwards, upon the plaintiff's endeavouring to obtain possession, defendant No. 1 commenced criminal proceedings against him and obtained an order, whereupon the plaintiff brought this present suit to establish his right to possession.

Defendant No. 1 contended that he had purchased at a sale under his own decree obtained against Collis on the 7th December 1874, and was put into possession by the Court, and that such purchase was prior in point of time to the auction-purchase of the defendant No. 2, the vendor to the plaintiff, and therefore at the time the plaintiff made his purchase, no right in the property remained to the judgment-debtor, and that such being the case, the plaintiff had no claim under which he could obtain possession.

The Muusif found that the liability of Collis to the defendant No. 1 was a personal liability, the defendant having received no security; and that therefore the decree obtained by the defendant and the subsequent purchase at the sale, although prior to the auction-purchase of the plaintiff's vendor, would not, according to the Full Bench decision in *Syud Emam Momtazooddeen Mahomed v. Rajcoomar Dass* (1), do away with the lien which the mortgagee had on the property; but inasmuch as the mortgagee had not made the defendant No. 1 a party to his suit, according to the authority of the case of *Srimoti Anund Mayi Dossee v. Dharendra Chunder Mookerjee* (2), the mortgagee or his vendee

(1) 14 B. L. R., 408.

(2) 8 B. L. R., 122.

would not be entitled to the property as against the defendant No. 1, who had purchased previously, and that moreover the plaintiff had failed to prove that he ever had possession of the property up to the time of his alleged dispossession, and that therefore the plaintiff was not entitled to possession.

The plaintiff appealed to the District Judge, who held, that the principle of *lis pendens* did not apply to the case, as the plaintiff only sued to have it declared that he had a lien on the property, and that although the defendant No. 1's purchase was subject to the lien on the property held by the plaintiff, yet, before the plaintiff could dispossess him, he was bound to give the defendant an opportunity of redeeming; that the only claim on the property that the plaintiff could make was that which the decree-holder could have made at the time the decree was passed: he therefore dismissed the plaintiff's suit.

The plaintiff appealed to the High Court.

Mr. *Evans* and Baboo *Madhub Chunder Ghose* for the appellant.

The *Advocate-General* (Mr. *Paul*) and Baboo *Mohiney Mohun Roy* for the respondent.

The judgment of the Court was delivered by

TOTTENHAM, J.—In this appeal there are two points for decision,—1st, whether or not the doctrine of *lis pendens* applies to the case; and 2ndly, if it does apply, whether the defendant can escape the effect of it on the plea that he had not notice of the proceedings taken in execution of the decree obtained by the mortgagee of the property in which the subject of the present dispute is included. The lower Appellate Court held, that the doctrine of *lis pendens* did not apply. We are of opinion that in so holding the District Judge was in error. The defendant, respondent, purchased the property, or rather the right and interest in it of his debtor, at a sale in execution of his own decree on the 7th of September 1874. At that time there was pending in the same Court a suit against the same debtor brought by his mortgagee to recover a debt secured by the

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mortgage of property which included that now in dispute; and on the 17th of September a decree was passed in that suit, ordering the amount to be recovered by the sale of the property. It seems clear that the defendant having on the 7th bought the mortgagor's right and interest *pendente lite*, acquired nothing more than the equity of redemption, and did not acquire the land free of the encumbrance created by the debtor. If authority be required for holding that a purchaser under such circumstances is bound by *lis pendens*, we would refer only to the ruling of the late Chief Justice of this Court, Sir R. Couch, in the case of *Raj Kissen Mookerjee v. Radha Madhub Halder* (1), in which decision we concur.

The other question is as to the defendant's being entitled to notice of the proceedings in execution of the decree establishing the mortgage lien. It has been argued that as he was not made a party to those proceedings, they cannot operate to his prejudice. But we find that the defendant by his own conduct made it impossible for the mortgagee, decree-holder, to be aware that he claimed any interest whatever in the mortgaged property. For the defendant in execution of his own decree caused the attachment and sale of the premises, which he has purchased at that sale, describing them as lakhiraj property. Now there was no lakhiraj property included in the mortgage, and it is now admitted that this was a misdescription. This misdescription was quite sufficient to relieve the mortgagee, decree-holder, of the obligation, if any had existed, of giving the present defendant notice of his proceedings in execution.

We are, therefore, of opinion that defendant has no right to maintain possession as against the plaintiff, whose title is derived from the sale held in accordance with the decree obtained by the mortgagee.

The judgments of the lower Courts must be reversed, and the appellant will have a decree for possession with all costs and interest at six per cent.

Appeal allowed.

(1) 21 W. R., 349.