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land of which the plaintiffs were to recover possession, and the decree accordingly provided that this should be ascertained in execution. Now decrees of Appellate Courts as well as decrees of original Courts ought to contain specifically the relief allowed by those Courts, and it was certainly necessary to determine by the decree what land, if any, the plaintiffs were to recover possession of. It would be necessary, therefore, to set aside the decree in order that this might be ascertained before judgment. But here arises a further question upon the defendant's plea of limitation, because inasmuch as the Judge has held that the plaintiffs are entitled to one portion of the land and not to the other, and especially as it appears that the evidence of possession was not of uniform equal force in regard to all the land, the Judge, in determining what land passed under the kubala, would have to find whether the plaintiffs had been in possession of that particular land within twelve years before suit. The case will have to be remanded accordingly to the lower Appellate Court. The costs of this appeal will follow the result.

Case remanded.

Before Mr. Justice L. S. Jackson and Mr. Justice Tottenham.

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 May 31.

HIRDY NARAIN AND ANOTHER (DEFENDANTS) v. SYED ALLAOOLLAH
 AND OTHERS (PLAINTIFFS).*

Mortgage—Equity of Redemption—Proportionate Share of Mortgage Debt.

A, the holder of a decree upon a mortgage-bond, attached in execution a one-third share of a certain mouza, one of seventeen monzas included in the mortgage, and the equity of redemption in which one-third share had been purchased by B. *Held*, that although, as laid down in *Nawab Azimut Ali Khan v. Jowahir Sing* (1), B would have been at liberty to insist that his one-third share should be burthened with no more than a proportionate amount of the original mortgage-debt, and might claim to redeem such share upon pay-

* Appeal from Appellate Decree, No. 133 of 1878, against the decree of Hafiz Abdul Karim, Khan Bahadur, Officiating First Subordinate Judge of Zilla Bhagulpore, dated 14th December 1877, affirming the decree of Rai Burma Dut, Bahadur, Sudder Munsif of Monghyr, dated the 25th May 1877.

(1) 18 Moore's L. A., 404.

ment of that quota, yet as he had not shown what that proportion was, nor paid it into Court, that *A* under the circumstances was entitled to enforce his attachment.

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THE plaintiff in this suit had purchased a decree on a mortgage-bond, obtained by one Mugni Ram against the second defendant, for Rs. 6,592-12-8. The mortgaged property originally consisted of seventeen mouzas. The mortgagor had subsequently to the mortgage sold a large number of these mouzas to various parties, the first defendant being the purchaser of a 3-auna share of Mouza Sundupore Mahauand, one of such mouzas. The plaintiff alleged that in execution of his decree the plaintiff had attached and sold a considerable portion of the mortgaged property, and had in fact realized Rs. 5,882-12-8 of his decretal money. In further satisfaction of the balance still due, the plaintiff had attached the share of Mouza Suudupore Mahauand, purchased by the first defendant. This property was however released from attachment, the first defendant having intervened and successfully objected to the intended sale. The present suit was thereupon instituted for the purpose of establishing the right of the plaintiff to sell the said lands in further execution of his decree. On the part of the defendants it was contended, first, that a part of the mortgaged property still remained in the possession of the judgment-debtor, and that the plaintiff was not entitled to attach that part of the mortgaged property in the hands of third parties until he had satisfied his decree, as far as possible, out of the lands still in the hands of the judgment-debtor. It was further contended that the defendant was bound in equity only to pay a proportionate share of the debt due under the decree calculated upon the proportionate value of each property included in the mortgage, and that the present suit could not therefore proceed until an account had been taken of the respective values of each of the mortgaged properties for the purpose of apportioning the relative share of the debt due upon each of the said properties. It appeared also that the plaintiff was himself the purchaser of one of the properties sold under his decree. The Court of first instance gave the plaintiff a decree. The lower Appellate Court, considering it to be an admitted fact that the whole property was mortgaged

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collectively, held as to the first plea of the defendant that the plaintiff possessed the power of putting up for sale one property out of the properties mortgaged in satisfaction of his debt. As to the defendant's second plea, the Court held, on the authority of *Bibee Sufeehunn v. Belashowaree* (1), that a decree-holder could not be compelled to bring a suit for a proportionate amount of the debt due, and dismissed the appeal.

The defendants appealed to the High Court.

Mr. *R. E. Twidale* for the appellants.

Mr. *M. L. Sandel* for the respondents.

The judgment of the Court was delivered by

JACKSON, J.—What the plaintiffs sought in this suit was an order that a certain mehal, or share in a mehal, in the possession of the defendants might be brought to sale in satisfaction of the balance due on a mortgage debt secured originally upon some seventeen estates of which the property now in question is one. It was stated in the plaint that all those properties, that is, all the others over which the mortgage extended, being sold, the plaintiffs obtained Rs. 5,882 out of the said decretal amount, but that Rs. 759 still remaining unpaid, an application was made for the share in suit being sold by auction, but upon a petition of objection on behalf of the defendants, the property was released from sale.

The principal objection made by the defendants was, that the suit of the plaintiffs could not proceed unless an account were taken of the whole mortgaged property as it stood in the hands of different purchasers, and which property had been separately assessed in respect of its liability to satisfy the whole mortgage, and the objection is made particularly in respect of the properties which Hur Prosad Chowdhry and others purchased in satisfaction of the security of the plaintiffs themselves.

The Munsif overruled the pleas of the defendants and gave judgment for the plaintiffs. On appeal, the Subordinate Judge

(1) 4 Wym., 228.

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after setting out the several pleas taken by the defendants, noticed the fourth, which is to this effect:—"When the property mortgaged entered in the decree alleged by the plaintiff is seventeen kullums, and of these some are in the possession of the judgment-debtor and some in that of other purchasers, the plaintiff has no right of putting to sale the share in dispute only leaving off all those properties." His finding upon that is to the following effect:—"It is an admitted fact that the whole property mortgaged in the decree alleged by the plaintiff is mortgaged collectively. In case of its being joint, the plaintiff is at liberty to realize the amount of his decree from whatever property he likes out of the property mortgaged. This right of the plaintiff cannot be rendered null and void for the reason that the defendants' first party have become the purchasers of one property out of the property mortgaged;" and then he takes up the fifth plea, viz., that "the plaintiff should apportion the whole of his mortgage-debt upon the whole property mortgaged and sue all the possessors of the property mortgaged for proportionate amounts," and observes that "this plea has in a manner been already decided in the finding on plea No. 4," and he overrules the plea and says:—"This contention would appear fully refuted on reference to Vol. IV of Wyman's Reports, p. 228, which contains the decision of the 26th August 1867." That case is also to be found in 8 W. R., 379. The learned Judges, no doubt, held in the particular circumstances of that case that, as stated in the head-note, "where a plaintiff's bond gives him a separate lien on each and all of several mouzas pledged as security, he is free to elect for sale whichever of the mouzas he thinks most likely to satisfy his claim." But then they go on to observe:—"In the present case there was nothing to prevent the plaintiff from purchasing any of the mouzas pledged to him, and he bought them at the risk of lessening his own security. Whether in his new position as mortgagor of the three mouzas in which he has purchased the equity of redemption he is liable for contribution to the holders of the two mouzas he is now proceeding against is another question, but we know of no law which prevents a transaction of this nature between a mortgagor and a mortgagee." It appears to us, as laid down in the case of *Nawab Azimut Ali*

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Khan v. Jowahir Singh (1), that the defendants in this case would have been at liberty to insist that the mouza which they had purchased should be burthened with no more than a proportionate amount of the original mortgage-debt, and might claim to redeem that mouza upon payment of that quota, so that if they could have shown that the amount chargeable upon their mouza was less than Rs. 759 which the plaintiffs claimed, and brought that money into Court, they might have got their mouza redeemed. That has not been done, nor has any reason been shown to lead to the supposition that if such an account had been taken the charge upon the mouza would have been less than Rs. 759. Under these circumstances, although we do not quite concur in the judgment of the Court below, we think that in substance that decision is right, and this appeal must be dismissed. We think also that each party should pay his own costs of this appeal.

Appeal dismissed.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

1878
 May 10.

SOONDER NARAIN (PLAINTIFF) v. BENNUD RAM AND OTHERS
 (DEFENDANTS).*

Guardian, Sale by—Act XL of 1858.

The mother and guardian of a Hindu minor, though not a guardian appointed under Act XL of 1858, when acting *bonâ fide* and under the pressure of necessity, may sell his real estate to pay ancestral debts and to provide for the maintenance of the minor.*

THIS was a suit instituted by the plaintiff, Soonder Narain, to obtain from Bennud Ram, the first defendant, possession of certain lands which had been the property of one Gouri Koyal, who died in 1272, leaving Deb Narain Koyal, the second defendant, his grandson and sole heir and legal representative.

(1) 13 Moore's I. A., 404.

* Appeal from appellate decree, No. 2493 of 1877, against the decree of Baboo Krishna Mohun Mookerjee, Second Subordinate Judge of Zilla Midnapore, dated the 27th August 1877, affirming the decree of Baboo Jebun Krishna Chattopadhyaya, Munsif of Newal, dated the 21st March 1876.