

*Judgement of the Lords of the Judicial Committee of the Privy Council on the appeal of Radhamadhub Holdar and another v. Monohur Mookerji from the High Court of Judicature at Fort William, in Bengal; delivered March 15th, 1888.*

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Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR BARNES PEACOCK.

[*Delivered by Lord Hobhouse.*]

THEIR Lordships think that this case is a very clear and simple one when once the numerous proceedings and dates are ascertained.

The material circumstances are these. Matangini was the proprietor of the estate in question, and she granted the estate in putni to one Mookerji, the father of the present Defendant. No difference is made by the change of title; and it may be considered that the putnidar has remained one and the same person. After that Matangini mortgaged her proprietary interest to Mookerji. Mookerji's position therefore was this: that he was putnidar of the estate with a charge upon what we should call the reversion of the proprietary interest. Under those circumstances a creditor of Matangini sues for his debt, gets a decree, attaches the property, and sells it in the month of April 1872; and under that sale the Plaintiff Radhamadhub became the purchaser. What did he get by his purchase? He got Matangini's proprietary right, subject to the putni, and subject to the charge. But in

▲ 53696. 125.—4/88. Wt. 328. E. & S.

the meantime Mookerji had been enforcing his charge against Matangini, and he got a decree, and in the month of May 1872, about a month after the sale to the Plaintiff, a sale took place under his decree, and he himself purchased at that sale. Now if Matangini herself had remained the owner of the proprietary interest she would be clearly excluded by that sale from all interest in the property. It is equally clear that the Plaintiff must be excluded, he having purchased only the right title and interest of Matangini, unless he can show that after the purchase in April 1872 he was not bound by the proceedings in Mookerji's suit. That very question has been raised and decided between the parties. After the two sales Radhamadhub, as claiming to be proprietor, sued Mookerji as putnidar for the rent due upon the putni, and his claim was that he stood in the shoes of Matangini. On the other hand Mookerji defended himself by saying:—"It is not you, but I, who stand in the shoes of Matangini, and therefore you have no claim against me;" and the decision was that, inasmuch as Mookerji's suit to enforce his charge was pending at the time of the sale to Radhamadhub, Radhamadhub was bound by the proceedings against Matangini. On that ground the rent suit was decided against Radhamadhub. Radhamadhub now comes to redeem; but the right to redeem rests on precisely the same ground as the right to rent was rested. In each case the question is equally: Who is the true representative of Matangini? Therefore their Lordships conceive that the matter was expressly decided by the High Court in the rent suit; but they desire to add that even if it had not been so decided they see no reason to believe that any amount of argument would induce them to come to a different conclusion than that to which the High Court came.

Their Lordships are therefore of opinion that the appeal must be dismissed, and that the Appellants must pay the costs; and they will humbly advise Her Majesty to that effect.

