

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Amar Chunder Kundu v. Soshi Bhusan Roy and others, from the High Court of Judicature at Fort William in Bengal; delivered the 10th December 1903.

Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

SIR JOHN BONSER.

[*Delivered by Sir Andrew Scoble.*]

The Bengal Tenancy Act of 1885 by Section 93 provides that "when any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued or is likely to ensue (a) inconvenience to the public, or (b) injury to private rights, the District Judge may," upon proper application and under certain specified conditions, appoint a manager. The powers and duties of the manager are mainly to be found defined in Section 98, Sub-section 3 of which provides that "he shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power." By Sub-section 8 of the same Section "he shall be removable by the order of the District Judge and not otherwise." And by Section 100 "the High Court

“ may from time to time make rules defining
 “ the powers and duties of managers under the
 “ foregoing Sections.” Under this Section the
 High Court made a rule that “ no manager shall
 “ have power to sell or mortgage any property,
 “ nor shall he grant or renew any lease for any
 “ period exceeding three years, without the
 “ express sanction of the District Judge.”

Mr. Haldane took a preliminary objection that this rule was *ultra vires*, sale and mortgage not being included in the terms “ for the purposes “ of management ” contained in Section 98 (3) of the Act. There is no definition in the Act of what is to be included in the word “ manage- ment,” and it must therefore be construed with reference to the subject-matter of the Act itself. Their Lordships agree with the learned Judges of the High Court at Calcutta in the opinion that “ to “ hold that the manager has no power to sell or “ mortgage would have the effect of frustrating “ the object for which, generally speaking, a “ common manager is appointed.” In India, “ the management of a property carries with it “ the obligation of paying the dues accruing upon “ it ; and for the payment of the dues which “ may accrue from time to time, it may become “ necessary either to sell, mortgage, or grant a “ lease. To hold that a common manager may “ grant a lease, but may not sell or mortgage, “ would have, in our opinion, the effect of “ nullifying the provisions made by the Legis- “ lature for the purpose indicated in the Act.”

Passing now to the facts of the case, it appears that on the 20th September 1890 a manager was appointed under the Act of an estate in Chittagong belonging to three co-owners named Rahimulla, Assanulla, and Basirulla. There was a considerable amount of Government Revenue due on the estate, and on the 23rd December 1890 the manager, with the sanction

of the District Judge, borrowed from the present Appellant, Amar Chunder, the sum of Rs. 6,200, at $1\frac{1}{4}$ per cent. per month interest, in order to pay off these arrears. To secure the advance he gave the Appellant a mortgage on the property under his management. On the 24th November 1891, finding he could borrow at a lower rate of interest than that charged by the Appellant, he obtained the sanction of the District Judge to carry out this purpose; and on the 4th January 1892 he executed a mortgage in favour of one Golak Chunder for the sum of Rs. 6,700, with interest at 1 per cent. per month. With the money thus obtained he paid off the Appellant's mortgage.

In the meanwhile, on the 4th August 1891, the Appellant obtained from Rahimulla, one of the co-owners, a mortgage of his own share in the property; and subsequently brought a suit, and obtained a decree, against Rahimulla alone, in execution of which decree he purchased Rahimulla's share.

The estate having been released from management under the Act, the heirs of Golak Chunder, on the 2nd April 1897, brought the present suit in the Court of the District Judge of Chittagong to establish their claim under the mortgage of 4th January 1892. To this suit the Appellant was made a party, and the sole question on this Appeal is whether the mortgage of Rahimulla's share to him gives him any right as against the mortgage of the whole property by the manager to Golak Chunder.

It appears to their Lordships that all that the Appellant obtained under the mortgage by Rahimulla or his subsequent purchase of Rahimulla's interest was that he should be substituted as a co-owner in the place of Rahimulla, and that whatever he took, whether under the mortgage or by reason of the purchase, was

subject to any charge on the estate that might be properly incurred by the manager during the period of management. In this view, no question of priority or subrogation arises, and it is unnecessary to do more than enquire whether the mortgage to Golak Chunder was a valid charge upon the estate. As already intimated their Lordships think that it was.

The question raised in the Courts below "whether Rabimulla had the power of creating a mortgage while the properties were in the hands of the common manager" has, in their Lordships' opinion, been incorrectly decided by the High Court. Rahimulla, no doubt, had no power of creating a mortgage on the whole estate; but there is nothing in the Act to take away his power of dealing with his own share. The words of Section 98 (3) give to the manager "the same powers as the co-owners jointly might but for his appointment have exercised," and the co-owners are prohibited from exercising "any such power," that is, any power which they might jointly have exercised had no manager been appointed. The restraint upon them is co-extensive with the power conferred on the manager; it does not extend to the exercise of individual rights. In the view which their Lordships take, the acquisition of Rahimulla's share in the property by the Appellant made the Appellant a co-owner of the property under the manager, and as such co-owner he is entitled to the benefit of the decree for redemption which has been passed in the suit, with such alteration of the date for redemption as the High Court may find proper.

Their Lordships will humbly advise His Majesty that the Appeal should be dismissed. The Appellant must pay the costs of the Appeal.
