

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kunwar Ragho Prasad and others v. Lala Mewa Lal and another, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 23rd January 1912.*

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PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ROBSON.

SIR JOHN EDGE.

Mr. AMEER ALLI.

[DELIVERED BY LORD MACNAGHTEN.]

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This is an Appeal from a decree of the High Court at Allahabad, which affirmed a decree of the Court of Small Causes there exercising the powers of a Subordinate Judge.

The suit was brought by the Respondents Mewa Lal and Lachmin Narain to recover property of which they had been deprived through the intervention of a Government official who attached it and got it sold in order to satisfy a debt due to Government from somebody else.

The facts are undisputed.

On the 17th of December 1895, the Respondents, who were mortgagees of shares in seven villages belonging to their mortgagor one Tufail Ali Khan, obtained the usual decree for sale. The 17th of April 1896 was the date fixed for

payment of principal, interest, and costs which amounted in all to Rs. 19,290.9.6. The mortgagor made default. On the 23rd of April 1896, the mortgagees applied for an order absolute. The order was drawn up on the 16th of May following. On the 24th of March 1897 an application was made for execution of the decree by sale of the mortgaged property, and on the 26th of April 1897 the execution case was transferred to the Collector's Court as the property was ancestral. The Decree came into the hands of the Sale Officer on the 8th of July 1897.

In the meantime, the wife of the mortgagor brought a suit *in forma pauperis* against her husband, Tufail Ali Khan, and the Respondents, claiming from her husband a lakh of rupees under a contract of dower, and alleging that that sum was charged on the mortgaged property in priority to the mortgages, the subject of the decree of the 17th of December 1895. On the 11th of May 1897 the suit was decreed with costs against Tufail Ali Khan, but dismissed with costs as against his mortgagees, and it was ordered that the amount of Court fees which would have been paid by the Plaintiff had she not been allowed to sue as pauper should be the first charge on the amount decreed to the Plaintiff, and should also be recoverable from the Defendant Tufail Ali Khan.

The order as regards the Court fees payable to Government was in accordance with the directions of Section 411 of the Civil Procedure Code, 1882, as to pauper suits. That Section is in the following terms :- -

“ 411. If the Plaintiff succeed in the suit, the Court shall  
 “ calculate the amount of the Court fees which would have  
 “ been paid by the Plaintiff if he had not been permitted to  
 “ sue as a pauper; and such amount shall be a first charge  
 “ on the subject-matter of the suit, and shall also be

“ recoverable by the Government from any party ordered  
 “ by the Decree to pay the same, in the same manner as costs  
 “ of suit are recoverable under this Code.”

There was an appeal to the High Court but it was dismissed with costs.

So the Respondents succeeded in preserving the priority of their encumbrances and in maintaining the decree of the 17th of December 1895. With this success all their troubles began. The Collector on behalf of Government applied for and obtained execution of the decree of the 11th of May 1897 not against Tufail Ali Khan against whom the suit was decreed, but against the mortgaged property, in regard to which the suit failed. That execution case was also sent to the Collector's Court. It was received by the Sale Officer on the 18th of February 1898, more than six months after the receipt of the decree of the 17th of December 1895. However, the Sale Officer fixed on the same day, the 22nd of July 1899, for sale in both cases. And when the day of sale came he put the property up for sale under the decree of the 11th of May 1897, and it was sold to Rai Bahadur, the father of the Appellants, for Rs. 1,529, an amount just sufficient to satisfy the claim of the Government.

The mortgagees' decree was returned to the Civil Court with a statement that no property was left for sale in connection with that decree. In taking this course the Sale Officer, according to the opinion of the Collector, acted legally. Possibly, said the Collector, he might have put the property up for sale under the mortgagees' decree, “proclaiming at the same time the debt due to Government as an encumbrance to be satisfied by the purchaser,” but there was no material irregularity. In the Collector's opinion the authorities clearly affirmed “the principle that the Government takes precedence of all

“ other creditors, whether or not they have a  
“ lien on the property.”

At the instance of the mortgagees the Civil Court directed that the property should be put up for sale again under the decree of the 17th of December 1895. Ultimately the mortgagees bought it for Rs. 18,365. They obtained formal possession. But it seems that Rai Bahadur had already obtained possession under his sale certificate. Both parties then exerted themselves to collect rents. Then followed a struggle for mutation of names. The Assistant Collector dismissed an application for that purpose by the mortgagees, blaming them for trying to avoid payment of the Government dues “ instead of quietly paying off ” the Court fees and getting the property sold in satisfaction of their large debt. After a learned argument he held that the wording of Section 411, Civil Procedure Code, was clear that the Government dues were the first charge on the property, and that Rai Bahadur had consequently a preferential claim. Then the mortgagees appealed to the Collector. He took the same view, after argument, though he confessed that he “ had not hitherto realised “ that the position of the Crown in such matters “ was so strong.” Lastly, the mortgagees applied to the Commissioner on second appeal. He, too, rejected their application, in the first instance on reading the record, and then on an application for revision after hearing the parties at considerable length, who “ argued as to the equity “ and legal rights of the case.” As to the merits he pronounced no opinion. He thought it essentially a case for the Civil Court. But, he added, that until the question was determined by a competent Court he did “ not think that any “ fairer decision could be come to than that at “ which the Collector arrived.”

So at last the mortgagees betook them to the Civil Court, to which they ought to have applied long before in a regular suit. The Judge of First Instance ordered that the Respondents should be put in possession of the property, and declared that they were the absolute owners. An appeal to the High Court was dismissed with costs. But the learned Judges, after argument, came to the conclusion that there was a substantial question of law involved, and gave leave to appeal to His Majesty in Council.

Their Lordships are at a loss to discover what question of law is involved in this case. So far as can be gathered from the judgments in the Collector's Court, the validity of the sale to Rai Bahadur was rested on two grounds (1) on the terms of Section 411 of the Civil Procedure Code, and the decree of the 11th of May 1897, and (2) on the prerogative of the Crown. As to the first point, the claim put forward on behalf of the Government is absurd. The decree of the 11th of May 1897 did not create or purport to create any charge on the mortgaged property in favour of the Government. The Government had no right to attach the property and sell it in execution under that decree, though, of course, such interest, if any, as remained in the mortgagor from whom the Court fees were declared to be recoverable, might have been reached by a proper proceeding. The order for the first sale was, therefore, without jurisdiction. The sale passed no property to the person declared purchaser. On the second point the claim advanced by the Collector on behalf of the Government is a preposterous claim. It is only when claims of the Crown and claims of "common persons" (to use an old expression) "concur" or come into competition that the Crown is preferred. The Crown has no more right than a "common person" to

seize A's property and apply it in or towards the discharge of a debt due from B. That is not a question of law. It is a matter of common justice, and it may be added, of common honesty.

Their Lordships will humbly advise His Majesty that the Appeal ought to be dismissed with costs.

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In the Privy Council.

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KUNWAR RAGHO PRASAD AND  
OTHERS

v.

LALA MEWA LAL AND ANOTHER.

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DELIVERED BY LORD MACNAGHTEN.

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