

Privy Council Appeals Nos. 75 and 76 of 1913.

Allahabad Appeals Nos. 14 and 15 of 1910.

Pandit Parbhu Dyal - - - - *Appellant,*

v.

Kalyan Das and others - - - - *Respondents.*

Pandit Parbhu Dyal - - - - *Appellant,*

v.

Sheikh Makbul Ahmad and others - - - *Respondents.*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN
PROVINCES, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 14TH DECEMBER 1915.

Present at the Hearing :

VISCOUNT HALDANE.

LORD WRENBURY.

LORD PARMOOR.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by MR. AMEER ALI.*]

The facts on which the two suits that have given rise to the present appeals were brought in the Court of the Subordinate Judge of Aligarh, are fully set out in the judgment of the High Court of Allahabad. It is sufficient, therefore, to state shortly the circumstances which form the basis of the appellant Parbhu Dyal's claim. He was the plaintiff in one of the actions (24 of 1906) which was a suit for the redemption

of a mortgage, whilst in the other (173 of 1906) he was joined as a defendant. Both suits, however, related to a village called Lodhamai. A half share of this property, in the nomenclature in vogue in this part of the country described as a 10-biswas share, belonged originally to one Ram Bakhsh. In the year 1863, Ram Bakhsh executed a usufructuary mortgage in respect of this share for a term of eleven and a half years in favour of one Debi Das since deceased. It may be noted here that just as 16 annas constitute the integral unit in Bengal and other places, 20 biswas form the unit in most parts of Upper India; 20 biswansis going to a biswa. The mortgage deed in favour of Debi Das provided that the mortgagee should remain in undisturbed possession of the mortgaged property and take the rents and profits in lieu of interest. The principal money secured by the mortgage was never repaid and Debi Das continued to hold the share after the expiration of the term for repayment. In the meantime, Ram Bakhsh was dealing with the equity of redemption; in 1866 he assigned his right in 7 biswas of his 10 biswas to the minor sons of a person named Zahur Ahmed; a little later he sold to Zahur Ahmed himself 2 biswas 19 biswansis, and subsequent thereto the remaining fraction left in his hands to the mortgagee Debi Das. The outstanding equity of redemption in respect of 9 biswas 19 biswansis thus vested in Zahur Ahmed and his sons. Zahur Ahmed died shortly after, leaving as his heirs besides his sons several daughters and two widows. His estate, including the right to redeem the mortgage to Debi Das, accordingly devolved on his heirs. In 1877 his sons under the guardianship of their mother brought a suit for redemption against Debi Das; and in May 1878 they obtained a decree for possession on

payment to the mortgagee of a specified sum. This money appears to have been paid into Court, and the plaintiffs obtained possession of the property in July 1878. The decree of the Court of First Instance was, however, varied on appeal by the High Court, which directed payment by the plaintiffs of a further sum of Rs. 9,000. This they failed to do and the mortgagee was restored to possession by an order of the Court in April 1880. Debi Das then applied to the Court for an order for mesne profits for the period during which he was out of possession, and in March 1881 he succeeded in obtaining a decree for a sum of over Rs. 5,000. In execution of this decretal order he caused the outstanding equity of redemption to be attached and sold, and at the auction sale purchased the same himself. After his purchase as aforesaid he purported to deal with the property as absolute owner; he mortgaged the property to one Sagar Mal who obtained a decree on his mortgage, and in execution of that decree the defendants in suit 173 of 1906 purchased the share in question in 1897. In suit 173 of 1906, which has given rise to Appeal 75, the heirs of Debi Das are the plaintiffs, and they seek to redeem the property on the ground that although Debi Das after his purchase in 1881 became the absolute owner, the defendants had in the auction sale held in 1897 only acquired his mortgagee right.

The sons of Zahur Ahmed on the other hand continued to deal with their right to the equity of redemption as still subsisting in them; and, by two deeds of sale, assigned to Parbhu Dyal, the appellant, a 5-biswas share of the property. Parbhu Dyal, after failing in one suit in 1905 on the ground of non-joinder of parties, brought in 1906 the present action to redeem

the mortgage executed by Ram Bakhsh in 1863 and for ancillary reliefs. He contended in the Courts below, as has been contended before this Board on his behalf, that the decree for mesne profits and all the proceedings thereunder, culminating in the sale at which Debi Das purported to purchase the equity of redemption, were made without jurisdiction and conveyed no title to the purchaser; and as they were mere "nullities" the right of his assignors was unaffected, and by virtue of the assignment to him he is entitled to redeem.

Both Courts have overruled his contentions and dismissed his suit. Their Lordships fully concur in the reasons given by the High Court for disallowing the plaintiff's claim. As the learned Judges point out, the Court which awarded the mesne profits had full jurisdiction in that behalf; if it exercised the jurisdiction wrongly, the persons aggrieved had their remedy under the provisions of the Indian Code of Civil Procedure, either by appeal to the High Court or by an application for revision. Objection was in fact taken under Section 311 of the Civil Procedure Code (1882) to the sale for mesne profits, which was disallowed, and there was no appeal from that order. The present action, in their Lordships' opinion, is wholly misconceived. It was further urged on appellant's behalf that he was at any rate entitled to redeem the share of Zahur Ahmed's daughters who were no parties to the suit of their brothers or to the subsequent proceedings held therein. Their Lordships are not satisfied that any right was in fact conveyed to Parbhu Dyal by those ladies, or that if any right was conveyed as alleged what its extent was.

The appeal will be dismissed with costs to be paid by the appellant, Parbhu Dyal, to the respondents who are represented at the hearing.

It is admitted that this judgment will govern appeal 75, which arises out of suit 173 of 1906 brought by the heirs of Debi Das. This appeal will also be dismissed.

And their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

PANDIT PARBHU DYAL

v.

KALYAN DAS AND OTHERS.

PANDIT PARBHU DYAL

v.

SHEIKH MAKBUJ AHMAD AND
OTHERS.

DELIVERED BY MR. AMEER ALI.

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