Privy Council Appeal No. 97 of 1912. *Allahabad Appeal No.* 43 *of* 1910.

Sheo Shankar Ram and others - - - *Appellants,*

v.

Musammat Jaddo Kunwar and others - - *Respondents.*

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 12TH MAY 1914.

Present at the Hearing.

LORD MOULTON. SIR JOHN EDGE.
LORD PARKER OF WADDINGTON. MR. AMEER ALI.

[*Delivered by* LORD MOULTON.]

This is an appeal from a judgment and decree of the High Court of Judicature of the North-Western Provinces, Allahabad, which reversed a decree of the Court of the Subordinate Judge of Ghazipur. The matter in issue is whether the plaintiffs or some of them are entitled to redeem the mortgaged properties in suit, or whether they are bound by certain foreclosure decrees dated the 27th of March 1895, which were followed by orders absolute dated the 3rd of April 1897, upon which possession was taken in August 1897.

So far as is necessary to make clear the question in issue, the facts of the case are as follows. The first and principal respondent, Musammat Jaddo Kunwar, was the mortgagee of certain properties under a mortgage dated the 16th September 1887, and of certain other

[42] J. 333. 125.—5/1914. E. & S.

properties by a mortgage of 6th January 1891. In 1895 she brought suits to foreclose those mortgages. But in the interval, Hira Ram and Dhundha Ram, members of a joint Hindoo family, had acquired interest in the mortgaged properties partly by purchase and partly by obtaining a usufructory mortgage. Both these interests were of course subordinate to the mortgage to Musammat Jaddo Kunwar. Although Hira Ram and Dhundha Ram acquired these interests in their own name, they were in fact acquired by them on behalf of the joint family although the respondent Musammat Jaddo Kunwar had no notice of this fact at any time material to the question in this action.

Hira Ram and Dhundha Ram were made parties to the foreclosure actions by Musummat Jaddo Kunwar as parties interested in the mortgaged properties, and the foreclosure decrees were pronounced against them. They did not make any attempt to avail themselves of their right to redeem, so that the order absolute was pronounced against them. They were at the time of acquiring the properties and also at all material times in the foreclosure suits the managers of the joint family and they acted as such, both in acquiring the properties and in abstaining from redeeming them. The appellants, the plaintiffs in this suit, are other members of the joint family, and they claim that they were, as such members, interested in the mortgaged properties at the time of the foreclosure suits, and that they ought to have been joined therein as parties, and that inasmuch as they were not so joined the foreclosure decrees do not bind them, and they are entitled now to redeem. The Subordinate Judge found in their favour on this point of principle but held that they were entitled to redeem their own properties only and not the entire

properties comprised in the said mortgages. On appeal to the High Court of Judicature it was held that they were bound by the foreclosure decrees on the ground that the joint family was effectively represented in the suit, and that in such case the Court is not bound to set aside the execution proceedings where substantial justice has been done merely because every existing member of the family was not formally a party to the suit.

There seems to be no doubt upon the Indian decisions (from which their Lordships see no reason to dissent) that there are occasions including foreclosure actions when the managers of a joint Hindoo family so effectively represent all other members of the family that the family as a whole is bound. It is quite clear from the facts of this case and the findings of the Courts upon them that this is a case where this principle ought to be applied. There is not the slightest ground for suggesting that the managers of the joint family did not act in every way in the interests of the family itself, and no question arises under Section 85 of The Transfer of Property Act, 1882, because the mortgagee had no notice of the plaintiffs' interests. Their Lordships have therefore no hesitation in deciding that there is no reason for interfering in the decision of the High Court. They will, therefore, humbly advise His Majesty that this appeal should be dismissed, and that the appellants should pay the costs.

In the Privy Council.

SHEO SHANKAR RAM AND OTHERS

v.

MUSAMMAT JADDO KUNWAR AND OTHERS.

DELIVERED BY LORD MOULTON.

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