

Privy Council Appeal No. 60 of 1927.
Patna Appeal No. 27 of 1926.

Maharaj Bahadur Singh and others - - - - - *Appellants*

v.

A. H. Forbes - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 11TH JUNE, 1929.

Present at the Hearing :

LORD CARSON.
SIR LANCELOT SANDERSON.
SIR BINOD MITTER.

[*Delivered by* SIR BINOD MITTER.]

This is an appeal against the decision of the High Court of Patna, dated 29th March, 1926, affirming the decision of the District Judge of Purneah, whereby it was held that a decree obtained by Dhanpat Sing, dated 10th July, 1896, cannot be executed against the respondent.

Dhanpat Sing was the *zamindar* of Lot Saifganj in Pargana Haveli, in the district of Purneah, and Chatterpat Sing was the holder of the *patni* of the said lot. He settled the same in several parcels with various *dar-patnidars* amongst others with the father of the present respondent. Dhanpat sold his *zamindari* to Bhagwanbati on the 27th June, 1893.

Dhanpat instituted a suit against the *patnidar* Chatterpat Sing on 21st September, 1893, for arrears of rent due to him up to 27th June, 1893, and obtained a decree which became final on 10th July, 1896.

On 19th July, 1896, Dhanpat executed a deed of trust in favour of several trustees for the benefit of his son Maharaj Bahadur Singh (and they are hereinafter referred to as appellants

or decree-holders) of several properties, including amongst others the decree of 10th July, 1896. Dhanpat died on the 21st July, 1896.

Chatterpat again defaulted in the payment of rent of the *putni* and on 14th May, 1900, Bhagwanbati, the purchaser, put up the *putni* for sale for arrears of rent for a period subsequent to her purchase. Mr. Forbes paid the arrears due to Bhagwanbati, amounting to Rs. 6,562-8, for the protection of his *dar-putni* tenure, and by such payment became a mortgagee of the entire *putni* under Section 13, Subsection 4, of the Putni Regulation, and he was put into possession of the same under the same section.

In execution of a money decree the right title and interest of Chatterpat in the *putni* tenure was sold on the 1st September, 1902, and one Surendra Naryan Sing purchased the same and obtained symbolical possession of the *putni* on the 18th May, 1902, although Mr. Forbes continued to be in actual possession.

Thereafter there was litigation between the decree-holders and Surendra. The latter alleged that the decree was a money decree, but it was ultimately held between them that the decree was a rent decree creating a charge on the *putni* tenure under Section 65 of the Bengal Tenancy Act.

The decree-holders applied on 9th May, 1908, for execution of that decree against the judgment debtor and the execution case was numbered 11 of 1908. The *putni* was attached and sold in execution of the said decree, but the sale was ultimately set aside on 16th February, 1911.

Mr. Forbes on the 9th July, 1906, instituted a suit against the decree-holders and Surendra for a declaration that the decree was a mere money decree, and on the 9th March, 1914, it was ultimately held by their Lordships of the Judicial Committee that the decree of 10th July, 1906, was not a decree for rent under Section 65 of the Bengal Tenancy Act, creating a charge on the tenure, but only a money decree, and that the respondent in this appeal had a charge under the Putni Regulation, and in any event this charge was not affected by any charge under the Bengal Tenancy Act. Their Lordships further held that the appellants were not entitled to execute the decree against the *putni* and they were restrained by a perpetual injunction from doing so. (*See* 41, I.A. 91.)

In the meantime a suit numbered 240 of 1910 had been instituted by Surendra against the respondent Forbes for accounts to which the decree-holders, that is, Maharaj Bahadur and others, were not made parties.

In that last-mentioned suit a final decree for the sale of the *putni* was made under Order 34, Rule 5, in favour of the respondent on 8th January, 1917, and the property was sold at the instance of the respondent and purchased by the latter on 4th August, 1917, for the sum of Rs. 2,000.

The appellants, the present decree-holders, on 22nd January, 1915, and on dates subsequent thereto, made various applications

for execution of the decree against the judgment debtor and Surendra and the respondent. The last application was on 2nd December, 1922. The details of such applications will be discussed later on.

The application of 2nd December, 1922, was against the respondent and asked for process against him for the sale of the *putni mahal*. This application was dismissed by the trial Judge on 16th April, 1924, on the ground that the respondent was not a representative of the judgment debtor and that the decree could not be executed against him. The trial Judge further held that the application of 2nd December, 1922, was not a continuation of the application of 9th May, 1908, but was a fresh application within the meaning of Section 48 of the Civil Procedure Code and was barred by the law of limitation.

The decree-holders appealed to the High Court of Judicature at Patna, and Mr. Justice Das, one of the judges, dismissed it, holding that, although the respondent as purchaser must be regarded as the representative of the mortgagor, he must also be considered as the representative in interest of the mortgagee and that the charge of the mortgagee is not extinguished in the hands of the respondent as purchaser of the property. He did not in that view express any opinion upon the other questions raised in the appeal. Mr. Justice Foster, the other Judge, held that by reason of the decision of the Judicial Committee in 1914 there was *res judicata* not only between the appellants and the respondent but also between the present appellants and Surendra, and he further held that the decree was barred by limitation. The present appeal is against the last-mentioned decision.

The appellants in the present appeal contended, firstly, that the application of 2nd December, 1922, was a continuation of the execution proceedings initiated by their application of 9th May, 1908; secondly, that as it had been held that the decree created a charge on the *putni* against Surendra and as the respondent merely purchased the equity of redemption from Surendra, the decree-holders must be deemed to be in the position of a second mortgagee of the *putni* and were entitled to sell the equity of redemption in the hands of the respondent, but they conceded that if the respondent insisted, then they would have to redeem the respondent; and thirdly, that Mr. Justice Foster was wrong on the question of *res judicata*. Mr. Dubé, for the respondent, disputed all these contentions.

Their Lordships will now refer to the various applications for execution in some detail.

On 22nd January, 1915, the decree-holders applied for execution of the decree of 10th July, 1896, whereby they prayed that the rent decree might be converted into a money decree and that Surendra be made one of the judgment debtors and they be allowed to take further proceedings in the execution case.

Surendra, on 27th March, 1915, alleged that he was not a representative of the judgment debtor's interest in the *putni*,

and that the same had been extinguished by his purchase and that the decree was barred by limitation.

On the 19th March, 1917, the decree-holders on the footing of the decree being merely a money decree, applied for attachment of other properties belonging to Chatterpat Sing. Before this application was disposed of and on 4th August, 1917, the respondent, as has already been stated, had purchased the *putni mahal* in execution of his decree.

On 23rd November, 1918, the decree-holders, again on the footing of the decree being a money decree, applied for and obtained an order that certain personal properties of Surendra might be attached and sold and from such sale proceeds their claim be satisfied. On Surendra's application his properties were ordered to be released.

The decree-holders appealed against the order releasing Surendra's personal properties, and the appeal was dismissed on 24th March, 1922. In dismissing the appeal, Mr. Justice Das said that, in his opinion, it was open to the decree-holders to proceed against the *putni* tenure in the hands of the respondent. This observation of the learned Judge was unnecessary for the purposes of his decision and was in no way binding on the respondent, who had not been made a party to the aforesaid proceedings.

In the view that their Lordships take of limitation, it is unnecessary to decide any other questions involved in the appeal, and accordingly their Lordships express no opinion whatsoever on any of the other points decided by the High Court.

Their Lordships observe that, after the decision of the Judicial Committee in 1914, the decree-holders by their application of 22nd January, 1915, gave up the position that their decree created any charge on the tenure, and in all their subsequent applications they attempted to execute the decree against properties other than the *putni* tenure. They observe that on 19th March, 1917, the decree-holders, in their application against Chatterpat, applied for process against properties other than the *putni*, and again on 23rd November they applied against Surendra for attachment and sale of properties other than the *putni*. This course the decree-holders persistently took till the observation of Mr. Justice Das on 24th March, 1922, to the effect that it was open to them to proceed against the *putni* tenure in the hands of the respondent.

Their Lordships have no doubt that the applications of 22nd January, 1915, 19th March, 1917, and 23rd November, 1918, were essentially different in character from the application of 9th May, 1908, and they are inclined to the view that the decree-holders had abandoned the application of 9th May, 1908, which proceeded on the footing that their decree created a charge on the tenure, but in any event they are clearly of opinion that the combined effect of these previous applications marks such substantial departure from the original application of 9th May, 1908,

as to make it impossible to hold that the application of 2nd December, 1922, was a continuation of the application of 9th May, 1908.

Their Lordships are, therefore, clearly of opinion that the application of 2nd December, 1922, was a fresh application within the meaning of Section 48 of the Civil Procedure Code and that the execution of the decree of 10th July, 1896, is barred by limitation.

They accordingly will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

MAHARAJ BAHADUR SINGH AND OTHERS

v.

A. H. FORBES.

DELIVERED BY SIR BINOD MITTHER.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1929.