
(2006) 03 AP CK 0113

In the Andhra Pradesh High Court

Case No : SA No"s. 1603 and 1604 of 2004

Allokam Peddabbayya and Another

APPELLANT

Vs

Allahabad Bank and Others

RESPONDENT

Date of Decision : 02-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 1, Order 34 Rule 7, 100
Transfer of Property Act, 1882 — Section 59A, 60, 85, 91

Citation : AIR 2006 AP 236 : (2006) 2 ALD 629 : (2006) 3 ALT 233 : (2006) 1
APLJ 425 : (2007) 1 BC 73

Hon'ble Judges : C.V. Ramulu, J

Bench : Single Bench

Advocate : Movva Chandrasekhar Rao, for N. Sriram Murthy, for the Appellant;
B. Damodar Redaty and N. Rajesivar Rao, for the Respondent No. 2, for the
Respondent

Final Decision : Dismissed

Judgement

C.V. Ramulu, J.—These two second appeals are filed u/s 100 of the CPC and arise out of a single suit - O.S. No. 96 of 1999 on the file of the learned Principal Junior Civil Judge, Guntur. Therefore, they are being disposed of by a common judgment.

2. S.A. No. 1603 of 2004 is filed being aggrieved by the Judgment and Decree dated 2-7-2004 made in A.S. No. 65 of 2002 on the file of the learned Vin Additional District Judge (FTC), Guntur, while S.A. No. 1604 of 2004 is filed being aggrieved by the Judgment and Decree dated 2-7-2004 in A.S. No. 168 of 2002 on the file of the learned VJJI Additional District Judge (FTC), Guntur. In the said appeals filed by defendants 1 and 2, the Judgment and Decree in the above suit - O.S. No. 96 of 1999 - decreeing the suit, were set aside and the appeals were allowed.

3. The appellants are the plaintiffs and the respondents are the defendants in the above suit, which was filed seeking a preliminary decree determining the amount

payable by the appellant/plaintiffs to the 1st respondent/1st defendant (Allahabad Bank) and on deposit of the same to pass a final decree for redemption of the plaint schedule property and retransfer the same unencumbered and if necessary by ordering delivery of possession and granting all reliefs to the plaintiffs as contemplated under Order XXXIV Rule 7 of the Civil Procedure Code. The parties are hereinafter referred to as they were arrayed in the suit.

4. It is the case of the plaintiffs that the plaint schedule property, which was owned by defendants 3 and 4, was divided into plots by forming a road in the centre and they started selling the plots. Defendants 3 and 4 sold 290 square yards of land originally to the brother of the 1st plaintiff i.e., Alokam Satyanarayana under a registered sale deed dated 9-7-1982 for a consideration of Rs. 2,890/-. Likewise, defendants 3 and 4 sold 254 square yards of land to one Alokam Yellamandaiah for a consideration of Rs. 2,540/- and an extent of 498 square yards to one Gogineni Butchaiah for a consideration of Rs. 4,980/- on the same day. Thereafter, all the said vendees sold the said extents of land (in all, 1042 sq. yds) which is a part of the plaint schedule property to the 1st plaintiff under separate registered sale deeds in the year 1985. Defendants 3 and 4 also sold an extent of 515 sq.yds of site to Alokam Dhanalaxmi on 19-3-1983 for a consideration of Rs. 5,150/- and an extent of 507 sq.yds to one Alokam Satyavathi on the same day for a consideration of Rs. 9,100/-. The said vendees, in rum, sold the same to the 2nd plaintiff under separate registered sale deeds in the year 1985. Thus, in all, the 2nd plaintiff purchased an extent of 1022 sq.yds of site. Defendants 3 and 4 also sold away the rest of the property to others. It is also the case of the plaintiffs that their predecessor in title have been in continuous possession and enjoyment of the entire property. They filed O.S No. 165 of 1994 against defendants 1, 3 and 4 herein for bare injunction, but the said suit was dismissed; against which, they filed an appeal in A.S. No. 67 of 1997 on the file of the learned I Additional District Judge, Guntur, which was pending (as on the date of filing of the present suit). They having come to know that the 1st defendant-Bank filed E.P. No. 203 of 1997 in O.S. No. 68 of 1987 and got orders of delivery of execution of the property, which includes items 1 and 2 of the present suit schedule property, filed E.A. No. 996 of 1997 and the same was pending and delivery was not recorded. They are the bonafide purchasers for valuable consideration of the property in their own right by virtue of the registered sale deeds. Even if the mortgage in favour of the 1st defendant-Bank was to be true and binding on them, the Court sale does not bind them, since they were not impleaded as parties to the said suit in O.S. No. 68 of 1987. They have every right to redeem the mortgage of the 1st defendant, at any time before 30 years, but they have not been given opportunity, at all, to redeem the mortgage. The sale of property in favour of the 2nd defendant without giving any opportunity to them is illegal and void. They are ready and willing to pay the entire amount i.e., principal, interest and subsequent expenses as contemplated under law, within the time granted by the Court. Hence, the suit.

5. Defendant No. 1-Bank filed a written statement denying the allegations made in the plaint and stating inter alia that they have sanctioned loan to defendant No. 3 to a tune of Rs. 10,000/- on 9-10-1979 repayable with interest and the 4th defendant stood as guarantor for the said loan. The defendants 3 and 4 created an equitable mortgage in respect of an extent of Ac. 1.34 cents in D. No. 80 of Gorantla Village in favour of the Bank by depositing the title deeds dated 15-3-1979 for the amount that might become due to the Bank under the term loan and also under cash credit loan. As they failed to repay the loan amount in spite of repeated demands, the Bank filed a suit in O.S. No. 68 of 1987 on the file of the learned Subordinate Judge, Guntur and obtained a preliminary decree. Defendants 3 and 4 were granted time upto 27-1-1989 for payment of the loan amount. Since, they did not repay the amount, the Bank filed I.A. No. 503 of 1989 for passing a final decree. Accordingly, a final decree was passed on 28-2-1991. Thereafter, the Bank filed E.P. No. 203 of 1987 for realization of an amount of Rs. 42,615-20 by way of sale of the plaint schedule property. After following the due procedure, the auction was conducted on 5-9-1993 and knocked down in favour of the 2nd defendant. The auction purchaser took possession of the property on 2-7-1997 in pursuance of a sale certificate issued by the Court. The plaintiffs are aware of creation of equitable mortgage by defendants 3 and 4 and are also bound by the preliminary and final decrees passed in O.S. No. 68 of 1987; therefore, they cannot claim any relief in the present suit. Hence, the suit is liable to be dismissed.

6. Defendant No. 2 also filed a written statement denying the averments made by the plaintiffs and asserting that he purchased the plaint schedule property as he was the highest bidder in the Court sale and took delivery of possession of an extent of Ac. 1.34 cts, which includes the plaint schedule properties also and thus he is the absolute owner and title holder. The plaintiffs are not in possession of the suit schedule properties as decided by the learned I Additional Junior Civil Judge, Guntur in O.S. No. 165 of 1994 filed by the plaintiffs. The plaintiffs have no cause of action to file the suit against defendants 1 and 2.

7. Defendants 3 and 4 remained ex pane.

8. On the above pleadings, the following issues were settled for trial :

1. Whether the plaintiffs are entitled for preliminary decree for redemption of the plaint schedule property as prayed for ?

2. To what relief ?

9. Before the trial Court, on behalf of the plaintiffs, the 1st plaintiff examined himself as P.W.I and got marked Exs.A1 to A10. On behalf of defendants 1 and 2, D.Ws.1 to 4 were examined and Exs.B1 to B5 were marked. On considering the oral and documentary evidence placed before it, the trial Court held that the final decree passed in O.S. No. 68 of 1987 and the subsequent proceedings in the E.P. are null and void and they do not bind the plaintiffs and as such, the plaintiffs are entitled for the relief of redemption of the plaint schedule mortgaged property.

Accordingly, the plaintiffs were directed to deposit an amount of Rs. 50,000/- with interest at 12% per annum from the date of deposit made by the 2nd defendant, in E.P. No. 106 of 1997 in O.S. No. 68 of 1987 till the date of deposit into Court and the 1st defendant was directed to refund the said amount to the 2nd defendant. Aggrieved by the same, defendant No. 1 filed A.S. No. 168 of 2002 and defendant No. 2 filed A.S. No. 65 of 2002 on the file of the learned VIII Additional District Judge (FTC), Guntur. The appellate Court after reappreciation of the entire evidence on record and on perusal of the judgment of the trial Court held that the plaintiffs are not the purchasers of equity of redemption and are not entitled for the relief of redemption of the plaint schedule property; thus, set aside the Judgment and Decree in O.S. No. 96 of 1999 and allowed the appeals. Aggrieved by the same, the-present second appeals are filed by the plaintiffs.

10. Learned Counsel for the appellants raised the following substantial questions of law for consideration in these second appeals.

1. Whether the right of the appellants/ plaintiffs to redeem the mortgage has been extinguished ?
2. Whether the Judgment and Decree made in O.S. No. 68 of 1987 on the file of the learned Additional Senior Civil Judge, Guntur is not binding on the appellant/ plaintiffs, since they were not parties to the said suit ?
3. Since the appellant/plaintiffs are only interested in a part of the mortgaged property, in the guise of redeeming the whole of the mortgage, whether the defendant No. 2, who is a bona fide purchaser can be denied the rest of the mortgaged property and equities cannot be worked out, in the facts and circumstances of the case ?

11. Sri Mowa Chandrasekhar Rao, learned Counsel appearing for the appellants, strenuously contended that firstly, the Judgment and Decree in O.S. No. 68 of 1987 on the file of the learned Additional Senior Civil Judge, Guntur is not binding on the appellant/plaintiffs, since they were not parties to the said suit. Secondly, the suit for foreclosure, sale and redemption is subject to the provisions of the CPC and under Order XXXIV Rule 1 of CPC, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage. Since the appellant/ plaintiffs were not made parties to the suit in O.S. No. 68 of 1987, the decree passed therein is not binding on them. Therefore, the right of redemption is not extinguished and will continue. Non-compliance with the provisions of Order XXXIV Rule 1 of the CPC would render the decree in O.S. No. 68 of 1987 unenforceable against the appellant/ plaintiffs. In this regard, while placing reliance on a reported judgment of this Court in Areti Maramma Vs. State Bank of India, Secunderabad and Others, , the learned Counsel submitted that in view of certain controversy as to the interpretation of proviso to Section 85 of the Transfer of Property Act (for short "the Act"), the legislature thought it fit to enact a provision in the form of Order XXXTV Rule 1 of the Civil Procedure Code.

The omission of the proviso to Section 85 of the Act, in its form or in its substance in Order XXXTV, Rule 1 is not without significance. In a way, it places a heavier burden on the party instituting the suit relating to mortgage to ensure that no party, which has interest in the property, is omitted and the plea that the mortgagee had no notice of such interest, which was available under the proviso to Section 85, is no longer available. The legislative intent is not at all in doubt. In the objects and reasons for enacting Order XXXIV Rule 1, it has been clearly stated that the proviso to Section 85 of the Act, has given rise to certain doubts which the Committee have sought to remove by substituting for it, the words now added with a view to making clear that a person, who is not a party, is not bound by a decree. The explanation has been inserted in order to remove doubts, which have arisen from the conflict of authorities on the point. From their own point of view, the plaintiffs (subsequent purchasers) wish to cure the defeat of their former proceedings, which have turned out to be imperfect. From this point of view of the purchaser of the equity of redemption, the mortgage is in fairness bound to give him an opportunity to redeem the mortgage and the only question that has to be seen is, when does the cause of action arise in a suit of this nature. Since the appellants were not aware of the suit filed by the mortgagee-Bank and they were not made parties to the suit, it cannot be said that the Court auction dated 5-3-1993 is binding on them and the right of redemption has been extinguished.

12. Then while answering next question as to whether the right of redemption is not extinguished, in the instant case, the learned Counsel for the appellant/plaintiffs stated that whether there was knowledge or no knowledge of the mortgage, the subsequent purchaser is entitled to redeem the mortgage and the right of redemption does not extinguish. Simply because the 2nd defendant has purchased the property in the Court auction, the right of redemption of the plaintiffs does not extinguish. In this regard, the learned Counsel relied upon various judgments. While relying upon *Chandramma v. Gunna Seethan* AIR 1931 Mad. 542, the learned Counsel submitted that the general rule that no person should be affected prejudicially by proceedings to which he is not a party is applicable to mortgage suits also. For persons, who have taken transfer of property subject to a mortgage cannot be bound by proceedings in a subsequent suit between the prior mortgagee and the mortgagor to which they were never made parties and this holds good as regards the cases of owners of the equity of redemption not made parties to the prior mortgagee's suit. He also submitted that, in this case, admittedly, the appellant-plaintiffs were not made parties to the suit filed by the mortgagee; therefore, they are not bound by the decree in O.S. No. 65 of 1987. He further relied upon the judgment in *A. Gnanam Vs. Palaniappa and Co. and Others*, and submitted that the right of redemption does not remain independent of the property itself. The sale of property to a complete stranger would convey complete better title to him and the equity of redemption shall also accompany the property. In other words, the stranger would then be in a position to substitute himself in place of the mortgagor and to

step in his shoes. The sale of property, that too, to a stranger, who had nothing to do with the mortgage and who was not a party to the same, would convey a complete title of the property to him and once the title to that property goes, the equity of redemption shall also accompany the property. In short, the appellant-plaintiffs would then be in a position to substitute themselves in place of defendant No. 2 and to step in his shoes. Therefore, the right of the appellant-plaintiffs for redemption does not extinguish.

13. He also relied upon a judgment reported in *Samarendra v. Krishna Kumar* ADR. 1967 SC 1440, and submitted that Section 91 of the Act provides that besides the mortgagor, any person other than the mortgagee, who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same, may redeem or institute a suit for redemption of such mortgaged property. The purchaser in execution proceedings, therefore, of the whole or part of equity of redemption has the right to redeem the mortgaged property. Such a right is based upon the principle that he steps into the shoes of his predecessor-in-title and has, therefore, the same rights, which his predecessor-in-title had before the purchase. Further, u/s 59A of the Act also all persons, who derive title from the mortgagor are included in the term "mortgagor" and, therefore, entitled to redeem. Learned Counsel further stated that as per Section 60 of the Act the mortgaged property has to be redeemed in whole and not of a proportionate part of the amount remaining due on the mortgage, except only where the mortgagee or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor. The mortgage remains one and undivided and if redeemed at all, can only be redeemed in its entirety and not in part. In this regard, the learned Counsel has relied upon many a judgment, but there is no necessity of delving into this aspect in detail for the discussion made *infra*.

14. Learned Counsel for the 2nd respondent has contended that the appellant/ plaintiffs subsequent purchasers) had knowledge of the mortgage in favour of the Bank and they could not have purchased the property in question; therefore, the sale itself is void. However, the learned Counsel has fairly conceded that there is no dispute as to the ratio laid down in the judgments relied upon by the learned Counsel for the appellants.

15. Now, the real question that falls for consideration is, whether, in the facts and circumstances of the case, as contemplated u/s 60 of CPC, the right of redemption is extinguished. If the right of redemption is extinguished, the suit itself is not maintainable, whether the plaintiffs were parties to the suit for foreclosure filed by the Bank or not. For the purpose of deciding as to whether the right of redemption on the part of the plaintiffs is extinguished or not, it is necessary to notice certain facts.

16. Defendant No. 3 submitted an application dated 6-10-1979 for sanction of loan and the loan was sanctioned by the 1st defendant-Bank for which the 4th defendant stood as guarantor. Defendant Nos. 3 and 4 mortgaged Ac. 1.34 cts of

land situated in D. No. 80 at Gorantla Village in favour of the 1st defendant-Bank by deposit of title deeds dated 15-3-1979 for the amount that become due to the Bank under cash-credit account. When defendants 3 and 4 failed to discharge the mortgage debt, the 1st defendant-Bank filed a suit in O.S. No. 68 of 1987 on the file of the learned Subordinate Judge, Guntur. It appears that in the meanwhile, the plaintiffs purchased the property. The Bank obtained a preliminary decree and the Court has granted time upto 27-1-1989 for redemption of the loan due to the 1st defendant-Bank. Defendants 3 and 4 have not chosen to pay the amount due under the preliminary decree, even after expiry of the period of redemption. Thus, the 1st defendant-Bank filed a petition in I.A. No. 503 of 1989 in O.S. No. 68 of 1987 for passing a final decree and obtained final decree on 28-2-1991 against defendants 3 and 4. Later, the 1st defendant-Bank brought Ac. 1.34 cts of land for sale, wherein the 2nd defendant became auction purchaser and took delivery of the property by depositing Rs. 50,000/- on 2-7-1997 in pursuance of a sale certificate issued by the Court. Plaintiffs 1 and 2 have purchased only part of the said Ac. 1.34 cts i.e., an extent of 2000 square yards. The rest of 3368 square yards of land was not claimed by anybody, as the same was not sold by defendants 3 and 4 to anybody. Here, it may be noted that defendant No. 1 bank filed a suit in O.S. No. 68 of 1987 for foreclosure and sale of Ac. 1.34 cts.

17. It was admitted by P.W.I (1st plaintiff) in his cross-examination that he did not peruse the original title deeds of his vendor. From this, it is clear that he did not enquire about the title deeds of the plaint schedule property, though it is his duty before purchasing the property, whether the vendors have valid title deeds or not in the year 1985. He also admitted that his Counsel informed him that the debt of defendants 3 and 4 is Rs. 45,000/- and defendants 3 and 4 borrowed the said loan from defendant No. 1 by depositing their title deeds, in the year 1993.

18. The Amin of the Court was examined as D.W.4. In his chief-examination, D.W.4 deposed that on 1-7-1997, a delivery warrant was entrusted to him in E.P. No. 203 of 1987 in O.S. No. 68 of 1987 on the file of the Additional Subordinate Judge's Court, Guntur to effect delivery. Ex.B3 is the office copy of delivery warrant. On 2-7-1997 he went to the property covered by the said E.P. along with the auction purchaser and delivery was effected to the 2nd defendant, in the presence of mediators. At the time of delivery of possession of suit schedule property to the 2nd defendant, nobody obstructed him. Ex.B4 is the certified copy of Mediatronama.

19. Admittedly, the suit filed by the Bank in O.S. No. 68 of 1987 was for foreclosure and sale of the mortgaged property. As seen above, preliminary decree was passed granting time for redemption upto 27-1-1989 and since no payment was made by defendants 3 and 4 herein, the Bank filed I.A. No. 503 of 1989 for passing a final decree. Accordingly, a final decree was passed on 28-2-1991. Thereafter, the property was put to auction after following the due procedure. The 2nd defendant became the highest bidder and he was put in

possession of the property by D.W.4-Amin. More than one year thereafter, the present suit has been filed.

20. It appears that the auction in pursuance of the final decree was conducted on 5-9-1993 and the 2nd defendant was sought to be put in possession. At that stage, the plaintiffs herein earlier filed suit in O.S. No. 165 of 1994 against defendants 2 to 4 seeking permanent injunction. Then the 2nd defendant came forward with a case that he purchased the property in Court auction, he had not yet taken possession from the Court and he had no intention to interfere with the plaintiffs possession and enjoyment. In view of the said assertion of the 2nd defendant, the suit in O.S. No. 165 of 1994 was dismissed. But, the plaintiffs preferred an appeal in A.S. No. 67 of 1997 on the file of the learned I Additional District Judge, Guntur, which is said to be pending. This all would show that the mortgage of the suit property by defendants 3 and 4 was within the knowledge of the plaintiffs, at least, after filing of O.S. No. 165 of 1994 by them, but they did not take steps immediately. By the time they filed the above suit for permanent injunction, the sale in favour of the 2nd defendant-auction purchaser was not confirmed. At that time, nothing prevented the plaintiffs from depositing the amounts. Such a course of action was not adopted by the plaintiffs. Having failed to do so, they cannot maintain the suit for redemption. They have missed the bus. After they failed in the suit in O.S. No. 165 of 1994, the sale in favour of the 2nd defendant was confirmed and he was put in possession of the property. More than one year thereafter, the present suit has been filed. That apart, the plaintiffs have not challenged the sale made in favour of the 2nd defendant on 5-9-1993. It is also interesting to notice that defendants 3 and 4 obtained the loan from the Bank in the year 1979 by depositing the title deeds. The plaintiffs herein alleged to have purchased the property in the year 1985 from defendants 3 and 4. In the sale deeds executed in favour of the plaintiffs, there is no recital that the said sales were made subject to redemption of mortgage in favour of the 1st defendant-Bank. On the other hand, it was recited in the sale deeds that there are no encumbrances over the said property. Under the above circumstances, the right of redemption for the plaintiffs was extinguished. The filing of the present suit, in the facts and circumstances of the case, is nothing but to scuttle the right of the 2nd defendant, which is not permissible under the law.

21. It is interesting to notice that the present suit was filed on 6-11-1998. By that time, the final decree in O.S. No. 68 of 1987 (suit for foreclosure) attained finality and sale was effected and defendant No. 2 was also put in possession of the property. Therefore, it cannot be said that as on the date of filing of the suit, right of redemption was available to the plaintiff and it is not extinguished. In this regard, it may be necessary to notice the judgment of the Apex reported in Mhadagonda Ramgonda Patil and Others Vs. Shripal Balwant Rainade and Others, , wherein it was held as under:

In the instant case, the earlier suit was not a suit for foreclosure nor was either

of the mortgages, a mortgage by conditional sale or an anomalous mortgage and, accordingly, there was no declaration in the final decree passed in the earlier suit for redemption that the mortgagors would be debarred from all right to redeem the mortgaged property...in a suit for redemption, a mortgage other than a mortgage by conditional sale or an anomalous mortgage, the mortgagor has a right of redemption even after the sale has taken place pursuant to the final decree, but before the confirmation of such sale....

It is also necessary to notice the latest judgment of the Apex Court in *Akkayanaicker v. A.A.A. Kotchadainadu* 2005 (10) SCC 166, wherein it has been observed as under :

3. Counsel for the appellant contended that right of the mortgagors to redeem could be extinguished only after the sale deed is executed and as the sale deed was executed subsequent to the suit, the appellants' right of redemption is not lost. It is argued that the appellants had filed a suit for redemption prior to the execution of sale deed, the right of redemption would survive and the appellants relied on second proviso to Section 60 of the Transfer of Property Act, 1882. But, we do not find any force in this contention. The proviso specifically says that the right of redemption conferred on the mortgagor u/s 60 could be extinguished by the act of parties or by decree of the Court. The sale deed was executed in favour of the auction-purchaser on 10-11-1981 and the appellants in their suit for redemption had not obtained any interim order staying the operation of the auction-sale or the execution of any sale deed and in the absence thereof such right of redemption would be extinguished.

22. In the instant case, as noticed above, the present suit in O.S. No. 96 of 1999 was filed one year after confirmation of sale and putting the 2nd defendant in possession. Therefore, the right of redemption is extinguished as contemplated under proviso to Section 60 of the Act i.e., by way of decree of the Court. As per Section 59A of the Act, the plaintiffs enter the shoes of their vendor (mortgagor) and take the place of mortgagor. But, this right exists so long as the relationship of mortgagor and mortgagee subsists,

23. For all the above reasons, I am of the considered opinion that there cannot be any dispute as to the ratio laid down in the judgments relied upon the learned Counsel for the appellants as conceded by the learned Counsel for the respondents. But, they have no relevance to the facts of this case, since the existence of right of redemption being sine qua non. In the facts and circumstances narrated above, no other decision can be reached, except that the right of redemption of the appellant-plaintiffs (subsequent purchasers) is extinguished in view of final decree proceedings in a suit for foreclosure filed by the 1st respondent-Bank in O.S. No. 68 of 1987 and the subsequent sale and putting the 2nd defendant in possession of the property, since defendants 3 and 4 have not paid amounts nor the plaintiffs having knowledge as to decree in O.S. No. 68 of 1987 have made any efforts for redemption of the mortgage. Therefore, the argument of the learned Counsel for the appellants that the

Judgment and Decree made in O.S. No. 68 of 1987 is not binding on the plaintiffs, since they were not parties to the said suit, also cannot be countenanced. The appellant-plaintiffs had the knowledge of the decree in O.S. No. 68 of 1987 and the proceedings before the Executing Court, at least, when they filed the suit in O.S. No. 165 of 1994.

24. In view of the above discussion, the substantial questions of law raised by the appellants pale into insignificance. The appellants have not made out any ground, u/s 100 of the Civil Procedure Code, to interfere with the judgments and decrees of the lower appellate Court. The second appeals are devoid of merits and liable to be dismissed; accordingly, they are dismissed; but, without any order as to costs.