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**(1960) 09 MP CK 0044**  
**In the Madhya Pradesh High Court**  
**Case No : S.A. No. 54 of 1959**

Madho Singh

APPELLANT

Vs

District Central Co-Bank Ltd.

RESPONDENT

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**Date of Decision :** 17-09-1960

**Acts Referred:**

Evidence Act, 1872 — Section 114(e)

**Citation :** (1961) JLJ 72

**Hon'ble Judges :** P.R. Sharma, J

**Bench :** Single Bench

**Advocate :** Shejwalkar, for the Appellant; J.P. Shrivastava and Batham, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.R. Sharma, J.—This is a Second Appeal by the legal representatives of the original plaintiff Shobharam against the judgment and decree dated the 31st of October, 1958 passed by the Addl. Distict Judge Gwalior in Civil Appeal Nos 193 and 205 of 1953.

2. The plaintiff Shobharam purchased the house in suit at an auction-sale held on 27-9-1939 by the Inspector, Co-operative Bank, Bhind for recovery of a debt due from Gangasingh and Pratapsingh, members of the Akloni Sabha (Society) No. 1, A sale certificate was issued to the plaintiff on 2-12-1939 in which it was mentioned that the house sold to him was free from all encumbrances.

The plaintiff was not given possession of the house in suit by the Inspector. On a notice being served by the plaintiff on the Director, Co-operative Banks and the Home Minister, the plaintiff was told that he should seek his remedy in a Civil Court.

3. At the lime of the auction-sale the defendant No. 2-Mohankunwar the widow of Gangasingh, was in possession of the house in suit. During his life-time Gangasingh on 14-7-1937 sold the house to Lokendrasingh defendant No. 5 who

in his turn sold it to Gangasingh's widow Mohankunwar on 20-11-1937. Mohankunwar on 26-11-1937 mortgaged the house with defendant No. 4-Chhotelal.

4. It was alleged in the plaint that Gangasingh and Pratapsingh were members of the Akloni Sabha (Society) and as such were liable to pay the debts due from the Society. The property belonging to Gangasingh and Pratapsingh including the house in suit was mortgaged with the Society. In the Haisiyat register maintained under the Qanoon Co-operative Societies Samvat 1974 a house situate at Lashkar belonging to Gangasingh and Pratapsingh was entered.

5. The plaintiff having been unable to obtain possession of the house sold to him filed the suit out of which the present appeal arises for possession of the house or, in the alternative, for refund of the purchase money. The defendant No. 1, namely the District Central Co-operative Bank Ltd., Bhind, admitted that the house in suit was auctioned by the Inspector of the Co-operative department for recovery of a debt due to it from the Akloni Society.

6. The defendant No. 2-Mst. Mohankunwar pleaded that her husband Gangasingh having sold the house to Lokendrasingh had lost all interest therein and that she having purchased the house in suit with her own money from Lokendrasingh the house could not be sold for recovery of a debt due from her husband. The defendant No. 3-Pratapsingh admitted that he and his brother Gangasingh were members of the Akloni Sabha (Society). He also admitted that the house in suit was mortgaged with the Akloni Sabha by both of them, and was sold by auction to Shobharam. It is not necessary for the purposes of the decision which I propose to give in this appeal to consider the objections raised by the other defendants.

7. The trial Court held that there was no evidence worth the name to prove that the house in dispute was mortgaged with the Akloni Sabha and that the debt due from the Society was a first charge on this house. This finding was upheld by the lower appellate Court. I am afraid the Courts below have in arriving at this conclusion travelled beyond the pleading in the present case, No one contended that the house which had been mortgaged with the Akloni Sabha by Gangasingh and Pratapsingh was different from the house in suit. In fact Pratapsingh in his deposition clearly admitted that both he and his brother were members of the Akloni Sabha and had mortgaged the house in suit with the Society. The certificate of sale issued to the plaintiff itself makes mention of the fact that Gangasingh and Pratapsingh had applied for a loan through the Akloni Society and that it was for realisation of the debt which had been advanced to Pratapsingh and Gangasingh through the Akloni Society and was as such recoverable from the Society, in the first instance, that the house in question was sold by auction. It was, in view of these facts, not open to the lower Courts to go behind the certificate of sale and hold that the auction was in respect of a loan due only from the Society and not personally from Gangasingh and Pratapsingh, without there being any allegations in the pleadings to this effect; and to embark

upon an inquiry whether the debt for which the house was auctioned was not recoverable personally from Gangasingh and Pratapsingh. The fact regarding the identity of the house which was mortgaged with the Society with the one which was sold to the present plaintiff having been admitted by Pratapsingh and not disputed by any other party to the suit, the lower Courts were in my opinion precluded from considering whether the house in suit was the same as was mortgaged with the Society by Gangasingh and Pratapsingh.

8. Another point on which the Courts below have wrongly entertained an inquiry is with regard to the procedure followed in auctioning the property. On the issue of a sale certificate a presumption can be drawn under Illustration (e) to Sec. 114 of the Evidence Act that the sale took place in accordance with the formalities prescribed by law.

9. In the case of Arjun and Others Vs. Emperor, it was held that when an attachment is proved, then in absence of any evidence to the contrary, it ought to be presumed that it was validly made with all necessary formalities. In the case of Shivratn vs. Notlal (30 Cal. page 1), where a piece of land was sold for arrears of revenue it was presumed that notices were served in the ordinary way on all persons interested in the property. It has to be noted that no plea was raised by any of the parties to the suit to the effect that the sale was void on account of non-observance of any of the formalities prescribed by the law. I am, therefore, of the opinion that the courts below acted illegally in holding the sale to be void as also in holding that the identity of the house sold with the one mortgaged by Gangasingh and Pratapsingh with the Akloni Society has not been established. The findings of the lower Courts on both of these points are, therefore, reversed.

10. Once it has been held that the property in suit was mortgaged with the Akloni Society and was validly sold for realisation of a debt due from Gangasingh and Pratapsingh, the further question as to effect of subsequent transfers in favour of the defendants Nos 2, 4, and 5 would not present any difficulty in the way of the plaintiff being granted the relief prayed for. According to Sec. 19 of the Qanoon Co-operative Societies, Samvat 1974 (Gwalior State) all such transfers shall be void as against the Society. On sale of the house the equities which were available to the Society would devolve on the auction purchaser. Gangasingh and Pratapsingh would in the matter of the present auction-sale occupy a position analogous to that of a judgment debtor. The auction-purchaser acquired by virtue of the sale in his favour all the rights and interest of the judgment-debtor in the property sold. I am, therefore, clearly of the opinion that the transfer by Gagasingh on 14-7-1957 to Lokendrasingh was ineffective as against the Society, When the property was once again acquired by Mohankunwar the position still remained the same. The mortgage in favour of Chhotelal could not confer on him a better title than that which originally Gangasingh and subsequently his widow Mohankunwar had in the property in dispute. Suffice it to say that the effect of the property being entered in the

Haisiyat-register is that all subsequent transfers of the property are rendered inoperative as against the Society and, on the sale of the property, as against the auction-purchaser.

11. I would, therefore, allow this appeal and setting aside the judgment and decree passed by the Court below decree the plaintiff's suit for possession of the house sold to him under the sale certificate Ex. P/3. The plaintiff shall be entitled to only one set of costs from the legal representatives of defendant No. 2, who being in possession of the property, have been resisting delivery of possession thereof to the plaintiff. The plaintiff's suit is decreed with costs throughout. The trial Court shall hold an inquiry under the provisions of Order XX rule 12 C. P. C. in order to determine what mesne profits from the date of the suit till delivery of possession should be allowed to the plaintiff.