

(1925) 03 AHC CK 0007
In the Allahabad High Court

Naunihal Singh and Others

APPELLANT

Vs

Alice Georgina Skinner and Another

RESPONDENT

Date of Decision : 27-03-1925

Acts Referred:

Citation : (1925) 03 AHC CK 0007

Hon'ble Judges : Lindsay, J;Kanhaiya Lal, J

Bench : Division Bench

Judgement

Lindsay, J.—Both these appeals arise out of a suit for redemption brought by Alice Georgina Skinner in the Court of the Subordinate Judge. This lady died after the decision in the Court below and is now represented by her executor, Mr. J.R.R. Skinner.

2. The suit was filed on the 11th May, 1920 and the mortgage of which, redemption was sought was executed by the plaintiff's father, Thomas Skinner, on the 1st September, 1863, to secure a loan of Bs. 50,000 which he took from a firm of money-lenders, Lakshmi Chand and Gobind Das who were popularly known as the Seths of Muttra. Since the date of the mortgage, the mortgaged property has passed into the hands of many persons the result being that the plaintiff found it necessary to implead over 80 defendants. The learned Subordinate Judge has passed a preliminary decree for redemption, dated the 31st January, 1923, by which he directs the plaintiff to pay a sum of Rs. 1,09,641-118.

3. The suit was not decreed in full, for the Subordinate Judge was of opinion that the plaintiff was not entitled to recover possession of Tilbegampur, one of the items of property mortgaged. And as regards another item named Daula Rajpura which at the time the suit was brought was in the possession of the Nawab of Pahasu, the Subordinate Judge declared that the suit had abated. The Nawab died during the pendency of the suit and the plaintiff failed to make his legal representative a party to the suit within the time limited by law.

4. In the Appeal No. 86 of 1924 the memorandum of appeal contains the names of 34 appellants but at the hearing only two of these have been represented before us, namely, Kunwar Naunihal Singh and Nawab Mukarram Ali Khan who is the successor-in-interest of the Nawab of Pahasu above mentioned. Mr. Girdhari Lal Agarwala has filed vakalatnamas which authorize him to appear on behalf of these two appellants, he has no authority to act for the other appellants and so in disposing of F.A. No. 86 of 1924 it is necessary to consider only the cases of these two persons.

5. Mr. Girdhari Lal also represents the appellants in F.A. No. 494 of 1922 which has been heard along with F.A. No. 86 of 1924.

6. It may be mentioned here that the peculiar and irregular procedure adopted by the Subordinate Judge in disposing of the suit has created considerable embarrassment.

7. On the 23rd of February, 1922, after having disposed of the main issues in the case, he passed an order directing accounts to be taken in order to enable him to ascertain the sum payable by the plaintiff for redemption of the mortgage. There could, of course, be no objection to his passing an interlocutory order for the taking of accounts but he embodied this order in the form of a decree which is printed at pp. 35 et seq of the record. Subsequently) after taking an account, he passed a preliminary decree for redemption on the 20th January, 1923. (See pp. 46 etseq of the record.) The Jaw does not contemplate procedure of this sort in a suit for redemption, The learned Subordinate Judge seems to have thought he was dealing with a suit for account in which it was his duty to pas3 a preliminary decree in accordance with the provisions of Order 20, Rule 13 of the CPC but that was not so.

8. This irregularity was brought to the notice of another Bench of this Court which decided that the two decrees drawn up in the Court below should be dealt with as if they constituted one decree only, namely, a preliminary decree for redemption, and so we have treated these two appeals accordingly.

9. I proceed now to mention the questions which arise here for decision in appeal No. 86 of 1924 as between the plaintiff-respondent and the two appellants on whose behalf the appeal has bean argued and I take up first the case of Kunwar Naunihal Singh. This defendant, when the suit was brought, was in possession of five items of the mortgaged property which the plaintiff was seeking to recover. They are items 1 to 5 in the Sch. A attached to the plaint and are called Gangola, Salehpur, Neknampur, Ghorī Bachhera and Sunpehra.

10. The defences raised by Naunihal Singh were:

(1) that the plaintiff had no title to maintain the suit for redemption;

(2) that these five villages had since the year 1872 been in the adverse possession of him and his predecessor-in-title;

(3) that he had purchased these villages in good faith and for a consideration of Rs. 1,77,000 from the Nawab of Rampur and was protected by Section 41 of the Transfer of Property Act, and, further, that in no case could the plaintiff recover possession without payment of this purchase money;

(4) that, in any event, the plaintiff was liable to pay the full sum due on the mortgage in suit amounting to about 17 lakhs of rupees, and that the plaintiff was not entitled to demand any account of the profits for the period during which he (Naunihal Singh) was in possession.

11. The Subordinate Judge held that the plaintiff had a good title to maintain the redemption suit. He held further that the suit was not barred by limitation as adverse possession could not run against the plaintiff before the 1st December, 1919 when the plaintiff's estate in the mortgaged property fell into possession on the death of the previous life-tenant. And, lastly, he found that Naunihal Singh was liable to submit to a decree for redemption after an account had been taken of the profits for the period during which the mortgagees or those who derived title from them had been in possession of the property.

12. Now in this appeal No. 86 of 1924 three substantial points have been argued on behalf of the appellant Naunihal Singh. One of these relates to the title of Alice Georgina Skinner and her right to maintain the suit. Another relates to the question of limitation which has been raised here in a new form. The third concerns the mortgage account, the argument being that it has not been properly calculated by the Court below. Before I proceed to discuss these matters it is necessary to say something of the history of the Skinner family and of the Skinner estate which has been the subject of much litigation. A good deal of that history will be found in the report of a case decided by their Lordships of the Privy Council in the year 1913. See *Richard Ross Skinnery Naunihal Singh* (1913) 35 All. 211. Naunihal Singh, who was a party to that litigation, is the same gentleman who is one of the appellants in the present case. Thomas Skinner who was the owner of the mortgaged property now in suit and who made the mortgage of the 1st September, 1863, now sought to be redeemed, was the father of Alice Georgina Skinner, the present plaintiff. He died in November 1864, leaving three sons and three daughters. By his will, dated the 22nd October, 1864 he made certain dispositions of his estate which afterwards gave rise to a good deal of controversy. This will was construed in the Privy Council case cited above, and to put the matter briefly, it was held that the effect of the will was to create a succession of life-estates in favour of the testator's three sons, and that in default of lawful male issue born to any of these sons, the estate was to go over to the daughters. The three sons of Thomas Skinner are all dead. The eldest of them, Thomas Brown Skinner, died on the 3rd July, 1900, the second, Richard Ross Skinner, who was the plaintiff in the suit which came before the Privy Council in the case mentioned above, died on the 15th August, 1913. The third son was George Corbyn Skinner who died on the 1st December, 1919. On this latter date the only surviving daughter of Thomas Skinner was Alice Georgina

who was the plaintiff in the present suit. Both the other sisters died in the life time of their brothers. It follows then that on the death of the third son, George Corbyn Skinner, the sole surviving sister, i.e., Alice Georgina, acquired an absolute estate in the property of her father, Thomas Skinner, provided that on that date there were no legitimate male issue of any of the three brothers in existence.

13. It has not been suggested that either of the two elder brothers left any such issue but it was pleaded by Naunihal Singh and some of the other defendants that George Corbyn Skinner left two legitimate sons still in existence in whose presence Alice Georgina could have no right to the estate. It was further pleaded by these same defendants that Alice Georgina was not the daughter of Thomas Skinner. This latter plea, however, was easily disposed of and the Subordinate Judge had no difficulty in finding that the plaintiff was Thomas Skinner's daughter. This matter has not been argued before us. As regards the other plea it is admittedly the fact that there are in existence two sons of George C. Skinner. The plaintiff's case is that they are illegitimate and the Subordinate Judge found that they were. We have heard arguments here relating to this point and we agree with the Subordinate Judge. Some of the evidence led by the plaintiff upon this issue was of little value but there is the statement of a witness, Christopher, a missionary, who deposed directly that the two sons left by George C. Skinner were born out of wedlock. This witness knew George C. Skinner well and lived with him at the time these sons were born. His evidence appears to us to be conclusive of the matter and it has not been rebutted. This part of the case is accordingly at an end and agreeing with the Court below I find that Alice Georgina Skinner was the lawful owner of her father's estate at the time she brought the suit and was entitled to maintain the suit for redemption.

14. The next question to be discussed is that of limitation. In the 17th ground taken in the memorandum of appeal the plea is raised that the suit is barred under Article 134 of the schedule to the Limitation Act (Act IX of 1908) which provides a period of 12 years for a suit brought to recover possession of immovable property which has been mortgaged and afterwards transferred by the mortgagee for valuable consideration. In cases to which the article applies time begins to run from the date of the transfer, that is to say, the transfer by the mortgagee. According to the case for Naunihal Singh he is such a transferee having in the year 1904, purchased the five villages, which he claims, from the Nawab of Rampur for a sum of Rs. 1,77,000. It is stated that in the year previous (1903) the Nawab bought these properties from the Seths of Muttra, the representatives of the mortgagees who advanced the money under the deed of 1st September, 1863, now in suit. It is to be observed here that this article was not pleaded in the Court below. There the defence of limitation was raised upon the ground of adverse possession pure and simple and was rightly overruled by the Subordinate Judge on the ground inter alia that no adverse possession could begin to run against the plaintiff who was not entitled to possession before the 1st December, 1919, the date on which her last surviving

brother, George C. Skinner, died.

15. The plaintiff being a remainderman under her father's will was entitled to plead Article 140 of the schedule to the Limitation Act and to say that she had the right to sue for recovery of the estate at any time within 12 years from the date it fell into possession. The suit was filed less than six months after that date. The Subordinate Judge was never called upon to consider the terms of Article 134 and although it is true that a plea of limitation can be raised at any time it was with some hesitation that I consented to its being raised here on the ground that the appellant Naunihal Singh had not for the purposes of this appeal printed the necessary documents upon which he relies for proof of the facts which he must establish in order to support the plea under Article 134. However as there could be no doubt as to those facts and as the necessary documents had been printed before in the case of *R.R. Skinner v. Naunihal Singh* (1913) 35 All. 211 which, as has been said, was decided by the Privy Council in the year 1913, we allowed the point to be argued. Those documents or some of them at any rate are referred to in their Lordships' judgment and I shall have occasion later on to draw attention to what was there said concerning them.

16. I shall now set out the facts and quote from the documents which are translated and printed in the paper-book of First Appeal No. 127 of 1907 *Naunihal Singh v. Richard Ross Skinner*. At page 1-A of this book we have the mortgage-deed of the 1st September, 1863, executed by Thomas Skinner. This is the mortgage of which redemption is now being sought. The deed is a hypothecation bond which recites that eighteen villages belonging to the mortgagor are being offered as security for a loan of Rs. 50,000. As a matter of fact only seventeen villages are named. The eighteenth which was probably meant to be included in the security was M. Audhel which was subsequently included in a later mortgage-deed presently to be mentioned. By this deed of the 1st September, 1863, the mortgagor undertook to pay the mortgage debt in full, principal and interest, at the end of December, 1863, and he covenanted that if he failed to discharge the debt as stipulated, he would put the Seths (the mortgagees) in possession who would then be able to realize and apply the income of the mortgagor's estate under their own superintendence and management. Thomas Skinner died towards the end of 1864, and following the narrative of events in the Privy Council judgment above referred to it appears that the Court of Wards took possession of the estate and held it till the year 1867 when possession was handed over to the eldest son, Thomas Brown Skinner, who then proceeded to deal with the estate as if he were the absolute owner which he was not for reasons already stated. On the 10th November, 1867, Thomas Brown Skinner executed a mortgage for Rs. 50,000 in favour of the Seths. Out of this sum Rs. 43,294-14-3 were due on the mortgage of the 1st September 1863, executed by his father. The balance he took cash for the purpose of discharging certain debts which he owed. The same property was mortgaged as was described in the earlier deed - the eighteen villages which were all mentioned by name and included Audhel, the village which had been

omitted in the document of 1863.

17. It is important to notice the conditions of this mortgage, for it was provided that the names of the mortgagees were to be entered in the revenue papers and it was further provided that the entire income of the mortgaged property was to be paid direct into the treasury of the mortgagees. It was declared that the mortgagees were to appoint a treasurer and two peons at the cost of the mortgagor and that the money which was collected from the villages was to be deposited with the treasurer without any diminution. Directions were then given regarding the application of the income after it had been so received in deposit. After payment of Government revenue, patwari's fees and the usual village expenses, the balance was to be applied in payment of the interest on the mortgage money, the salaries of the two peons and the treasurer appointed by the mortgagee and the salaries of the mortgagor's own servants and karindas. If any surplus remained after providing for these charges, it was to be applied in reduction of the principal sum. Another provision was that if any of the karindas of the mortgagor acted against the wishes of the mortgagees, he was to be dismissed on a complaint being made by the treasurer. It is not necessary to refer to any of the other terms of this document, but it will be observed that the result of the arrangement just mentioned was to put the mortgagees in complete control of the revenues of the mortgaged estate as effectively as if they had been put in actual physical possession and it was no doubt for this reason that it was stated in the Privy Council judgment that this mortgage of 1867 executed by Thomas Brown Skinner was a mortgage with possession. What their Lordships say with reference to this transaction is:

At that time there was due on the mortgage for Rs. 50,000 granted by his father, Thomas Skinner, a sum of Rs. 43,000. The mortgagees were placed in possession by him (Thomas Brown Skinner). Subsequent to this transaction Thomas Brown Skinner borrowed further sums from the mortgagees under two deeds of further charge dated respectively, the 9th October, 1869, and the 7th February, 1872.

18. The next thing to be noticed is that on the 20th December, 1872, Seth Lachman Das, who was then the representative of the mortgagees, purchased in execution of simple money decrees obtained by other creditors five of the villages which he held in mortgage. The sale certificates are all printed in the paper-book of F.A. No. 127 of 1907, pp. 13-Act seq. Those five villages were Neknampur, Ghorī Bachhera, Sunpehra, Gangola and Salehpur. In the certificates the property acquired by purchase is the "judgment-debtor's equity of redemption" in all five villages. The judgment debtor was Thomas Brown Skinner. We hear nothing more of these properties until we come to the 26th December, 1898, on which date Seth Lachman Das made a mortgage in favour of the Nawab of Rampur to secure a debt of 15 lakhs of rupees. This was a mortgage with possession, and among the items of property mortgaged were the five villages mentioned above. There can be no doubt that in the mortgage-deed these villages were described by the Seth as being his own property. He distinctly calls

them his own and says he is mortgaging them with all the proprietary and zamindari rights, and in the schedule attached to the mortgage he sets out the value of each village and says that all five are worth Rs. 1,78,100. That is obviously a valuation of the proprietary rights. This document of mortgage is to be found at page 17-R. of the paper-book of F.A. No. 127 of 1907.

19. Then we come to a document, dated the 24th September, 1903, at page 29-R of the same record. This is a conveyance by the Seth of certain of the properties already mortgaged to the Nawab, It seems that the Seth being unable to keep down the interest on the mortgage-debt determined to Sell the property or most of it in satisfaction of the debt. The property conveyed included the five villages of which we have been speaking and so they passed to the Nawab of Rampur. On the 11th April, 1904, the Nawab conveyed these villages to Naunihal Singh for a sum of Rs. 1,77,00. The deed is printed at page 35-R of the printed record of F.A. No. 127 of 1907 and in it the Nawab, after reciting the conveyance made to him by the Seth, describes himself as the absolute owner. These then are the facts upon which Naunihal Singh relies in support of his plea of limitation raised under Article 134 and the question is whether he is entitled to the benefit of that article. In my opinion he is. It has been argued before us that Article 134 cannot apply because the mortgage of 1863 was not a mortgage with possession and because the mortgagees did not obtain possession under that mortgage but under the later and independent mortgage of 1867 executed by Thomas Brown Skinner. According to this argument Article 134 must be so read as to mean that the property which has been mortgaged must have been, in the first instance, mortgaged with possession and that the transfer referred to must be a transfer made by a mortgagee who has acquired possession under the mortgage, I cannot construe the article in this way. It deals with transfers of property which has been mortgaged. The article does not say "mortgaged with possession." I agree, of course, that the suits referred to in the article being suits for possession, it must be assumed that when such a suit is brought the defendant-transferee is in possession. I also think it reasonable to hold that the transfer which he has taken must have been one which placed, the transferee in possession and that consequently where the transferor is a mortgagee, he must have been in possession of the mortgaged property at the time he made the transfer. But I am not prepared to accept the argument that the possession which the transferor has at the time of the transfer must necessarily have been acquired under the mortgage originally made in his favour. It seems to me that even if the mortgage was a simple mortgage, and if the mortgagee subsequently gets possession of the mortgage property, otherwise, as for example, by purchase in execution of a simple money decree obtained by another creditor, the article will still apply if it is established that at the time the transfer is made the mortgagee was in possession no matter under what title. The article is designed for the protection of a transferee who has been led by a mortgagee to believe that he is acquiring not merely mortgagee rights but a full proprietary title. To quote the words of their Lordships of the Privy Council in *Radanath Das*

v. Gisborne (1871) 14 M.I.A. 1 in construing the cognate section under the old Act XIV of 1859 "purchaser must mean some person who purchases that which is de facto a mortgage upon a representation made to him and in the full belief that it is not a mortgage but an absolute title."

20. If that is so, I fail to see why it should make" any difference to the purchaser (now the transferee) whether the possession which his transferor has at the time of the transfer arose directly out of the mortgage or was, prior to the date of transfer, acquired in some other way. The possession is there and is the principal factor in determining the belief of the transferee that his transferor is giving him a full proprietary title. The transferor could not very well purport to coufer such a title if he were not in actual possession. I do not see why the transferee should be bound to inquire how that possession was obtained, for under the law as it now stands the transferee is not required to show bona fides which was necessary under the law as it was when the case of Radanath Das v. Gisborne (1871) 14 M.I.A. 1 was decided. The alteration in the law appears to have been made advisedly in order to exclude the notion that absence of notice of the real owner's claim was necessary to enable a purchaser to claim the protection of this article. But I am told that this Court has decided in favour of the interpretation of Article 134 relied upon by the learned Counsel for the plaintiff-respondent and I am referred to the Bench decision in the case of Musammam Ram Piari and Others Vs. Budhsain and Others, I cannot accept the argument. At page 167 of the report after referring to the purpose of Art 134, the learned Judges say that the transfer referred to in Article 134, is a transfer with possession or followed by possession as a necessary incident or ingredient of it and they cite another judgment of this Court in support of this observation Husani Khanam v. Hussain Khan (1907) 29 All. 471. This observation is in my judgment no authority for the proposition now put forward. The "transfer" to which reference is made is obviously the transfer made by the mortgagee, and, as I have already indicated, I agree that the mortgagee, when he comes to make the transfer, must be in a position to hand over possession which he cannot do unless he has got it himself. But the observation cannot be deemed to embrace the transfer made to the mortgagee in the first instance and to mean that the mortgage must have been a mortgage with possession under which the mortgagee entered either at the time the mortgage was granted or subsequently.

21. But, apart from this, let us see how the matter stands in this case. How did the mortgagees, whose representative afterwards sold to the Nawab of Rampur, obtain possession of these five villages.

22. It is said that they acquired it under the mortgage executed by Thomas Brown Skinner in 1867 and also under the purchases in execution made in the year 1872 and not under the mortgage of 1863 made by Thomas Skinner.

23. I do not think this statement is borne out by the facts. I have already pointed out that in the deed of 1863, the mortgagor covenanted to hand over possession in case he failed to discharge the entire mortgage-debt, to the end of December

of that year. There can be no doubt that the debt was not so discharged; for it is proved that in 1867, when Thomas B. Skinner executed his mortgage, there was still outstanding a sum of Rs. 43,000 odd on the earlier mortgage in respect of which the mortgagees were entitled to take possession. Thomas Brown Skinner, to secure this debt and a further loan of Rs. 6,000 odd makes the mortgage of the 10th November, 1867, and places the mortgagees in complete control of the income of the mortgaged property and I recall here what their Lordships of the Privy Council said regarding this arrangement. They said that the mortgagees were placed in possession by him (i.e., Thomas Brown Skinner). If this is so, did the mortgagees take possession under the mortgage of 1863 or the mortgage of 1867? That they were entitled to have possession under the earlier mortgage is clear. It is to be said then that notwithstanding this the mortgagees' possession was acquired not under the earlier, but under the later mortgage, a transaction quite independent of the first. That was evidently not the opinion of their Lordships of the Privy Council. At page 504 of the report in A.L.J.R., they say:

But the case, in their Lordships' view, stands in a very different position with regard to the rights of mortgagees and their successors under mortgages granted, not by the appellants' brothers but by the appellant's father, Thomas Skinner. With regard to the appellant's brother it is decided by this judgment that the estate which he possessed was that of a tenant for life and that mortgages proceeding in respect of debts incurred by him could not affect the estate beyond his life. Even if it be supposed that after he, Thomas Brown Skinner, came into possession, he granted mortgages in renewal of those granted by his father and the outstanding rights of the mortgagees could not in equity or justice be prejudiced thereby. To do so would be to operate a substantial defeat of the rights of those mortgagees and to imply what, certainly never was the intention of any of the parties to the transaction that by the renewal of a mortgage by a person with a limited interest in the estate the intention was to operate a discharge of debts effectually secured upon the radical right.

24. It seems to me, therefore, that the mortgage of 1853 being still alive in 1867 and the mortgagees being under that mortgage entitled to get possession, the possession delivered by Thomas Brown Skinner in 1867 must be referred to that right and the mortgagees were, therefore, in possession of the mortgaged property from that time under Thomas Skinner's mortgage of 1863 and quite apart from such possession as was subsequently gained by the auction-purchases in 1872 under the decrees obtained against Thomas Brown Skinner.

24. In this view, therefore, even if the construction of Art.134 propounded by the learned Counsel for the plaintiff-respondent be accepted, the conditions necessary to give the purchaser the protection of Article 134 are fulfilled. I have referred to the sale of the mortgaged property to the Nawab of Rampur in 1903 and to the sale by him to Naunihal Singh in 1904. When Seth Lachman Das sold to the Nawab in 1903, he was in possession of these five villages and had been so far over thirty years. He purported to convey an absolute title to the Nawab,

and no doubt believed that he had a right to do soon the understanding, mistaken though it was, that he had acquired the proprietary right by the purchase of Thomas Brown Skinner's equity of redemption in the year 1872. That the Nawab gave valuable consideration for the sale is clearly established as is also the fact that in the following year, 1904, Naunihal Singh paid the Nawab Rs. 1,77,000 for the full proprietary interest in these villages. For these reasons, I hold that the plea of limitation raised under Article 134 must prevail and that Naunihal Singh is not liable to be ejected now in a suit for redemption of the mortgage of 1863.

25. It may be noted here that this plea of limitation was not available to Naunihal Singh in the suit which Richard Ross Skinner brought against him in 1906 and which was decided by their Lordships in the year 1913. By that time the period of twelve years, reckoning from the date of the sale by the Seth to the Nawab of Rampur (the 24th September, 1903) had not expired.

26. The appeal of Naunihal Singh must, therefore, be allowed and the decree of the lower Court reversed in so far as it awards the possession of the five villages Gangola, Salhpur, Neknampur, Ghorī Bachhera and Sunpehra to the plaintiff. The decision relieves me from the duty of examining the other question which was argued on behalf of the appellant Naunihal Singh, namely, the question of how the account on the mortgage should be taken. As Naunihal Singh is found to be entitled to retain possession of these five villages, he has no interest in the amount which the plaintiff is liable to pay.

27. As regards the other appellant Nawab Mukarram Ali Khan, who is represented by Mr. Girdhari Lal Agarwala, all that need be said is that he is entitled to no relief under this appeal. He claims to be entitled to retain possession of one item of the mortgaged property only, viz., M. Daula Eajpura, and as things stand at present, he has got what he wanted, for the suit, in so far as it concerns this village, has been declared by the Subordinate Judge to have abated. I have already mentioned that no other appellants except these two have been represented before us in this appeal (i.e., F.A. No. 86 of 1924).

F.A. No. 494 of 1922.

28. This appeal is without substance and must fail. The appellants are three of the defendants, Gobind Sarup, Naun Sarup and Chand Sarup. They are in possession of a 10 biswa share of M. Mathurapur, one of the mortgaged items which they claim to have acquired as auction-purchasers in execution proceedings. To explain the nature of the defence set up by these persons it is necessary to state the following facts : Richard Ross Skinner who had sued for redemption in 1906, died on the 15th August, 1913, a few months after the decision of their Lordships of the Privy Council. Their Lordships had directed the suit of Richard Ross Skinner to be remitted to the High Court to be dealt with upon the footing that the rights under the mortgages granted by Thomas Skinner should be satisfied by payment being made to the mortgagees or their

successors. On such payment being made within a time to be fixed, Richard Ross Skinner was to be given a decree for possession; on failure to pay, his suit was to be dismissed. Before the investigation necessary to give effect to these orders could be held, Richard Ross Skinner died and having left no legal representatives who could continue the claim, the suit abated. An attempt was made by his brother, George Corbyn Skinner, to get leave to continue the suit but this failed for the reason that his title as a life-tenant was quite independent of that which his brother had held. Having failed in this attempt, George Corbyn Skinner brought in his own right a suit for redemption which never reached the stage of decision owing to his death on the 1st December, 1919.

29. Now in the suit which was brought by George Corbyn Skinner these three appellants in First Appeal No. 494 of 1922 were impleaded as defendants. In the course of that suit a compromise was effected between George C. Skinner and these defendants in accordance with which apparently they were allowed to retain possession of a 10 biswa share in M. Mathurapur, one of the items of property mortgaged. In the present suit they set up this compromise as a bar to the claim of the plaintiff in respect of this property. The Subordinate Judge overruled this defence being of opinion that no agreement entered into between George C. Skinner and these defendants could bind the plaintiff in the present action. This was without doubt a correct decision; for George G. Skinner being only a life tenant, no act of his could be binding upon the plaintiff in the present suit. She was not claiming under George C. Skinner but under an independent title.

30. The appellants seek to raise this plea again in appeal, but for the reason just given, it cannot succeed. First Appeal No. 494 of 1922, therefore, fails. The result, therefore, is as follows:

First Appeal No. 86 of 1924 succeeds so far as the claim of Kunwar Naunihal Singh is concerned and the decree of the lower Court is reversed to this extent that it is declared that the suit of the plaintiff fails and is dismissed with respect to the five villages Gangola, Salehpur, Neknam-pur, Ghorī Bachhera and Sunpehra. The decree of the Court below will be amended accordingly. As regards costs I decline to make any order in favour of K. Naunihal Singh either here or in the Court below. He has succeeded on a plea of limitation which was not raised in the trial Court and in this Court he failed to have translated and printed the evidence by which he sought to support the plea of limitation raised here. In other respects F.A. No. 86 of 1924 fails and is dismissed with costs in this Court against the answering respondent (the plaintiff) including fees on the higher scale. First Appeal No. 494 of 1922 fails and is dismissed with costs.

Kanhaiya Lal, J.

31. I agree generally with the conclusions at which my learned brother has arrived and only wish to add a few observations in regard to the precise bearing of Articles 134 and 140 of the Indian Limitation Act on the subject-matter in

issue in these appeals. The mortgage sought to be redeemed was effected by Thomas Skinner on the 1st September, 1863 in favour of the firm of Seth Lakshmi Chand and Seth Govind Das of Muttra for Rs. 50,000. The mortgage money was repayable with interest at Re. 1 per cent, par mensem by the 31st December 1863 and in case of default it was to bear interest at 1 1/2 per cent, per mensem from the date of its execution. There was a further covenant that the interest shall be regularly paid every half year and that similar payments will be made towards the principal year after year till the entire mortgage money was paid up; and that if the mortgagor failed to pay the principal and interest from the profits of his property, as provided in the mortgage-deed, he shall put the mortgagees in possession and occupation of the hypothecated villages so that they might recover the principal and interest by taking the property under their own management and supervision. In other words, the mortgage was a simple mortgage convertible into a usufructuary mortgage on the happening of a certain contingency.

32. Thomas Skinner died in November 1864 leaving a will. Clauses 4 and 5 of which provided that his private zamindari which had been granted to him by the Government as a reward for the services rendered during the rebellion of 1857, and all villages, houses and other property added by him from time to time to the original grants, shall on his demise descend to his eldest son, Thomas Brown Skinner, and to his lawful male children according to the law of inheritance; and in the event of the eldest son, Thomas Brown Skinner, dying without lawful male children, the same shall descend to the next male heir of the testator; and should all his sons die without lawful male children, it shall descend to his female children or, in the event of their death, to the female children born in wedlock of his sons in succession.

33. By virtue of this will Thomas Brown Skinner took possession of the estate from the Court of Wards which had meanwhile taken charge of it. On the 10th November, 1867 he executed a mortgage in favour of the Muttra firm the proprietor whereof was now Seth Govind Dass, for Rs. 50,000 out of which Rs. 43,294-14-3 were credited on account of principal and interest due to the said firm on account of a previous mortgage, and the balance was taken by him in cash for his own purposes. The same property which had been previously mortgaged was hypothecated again and it was provided that the mortgagors shall get the name of the mortgagee entered in the revenue papers in respect of the mortgaged villages and that the karindas and servants of the mortgagor shall make collections and assessment in respect of the same of their own authority ; but a treasurer and two peons shall be appointed on behalf of the mortgagee to supervise the collections and take charge of the money so realised, to be applied after payment of the Government revenue, the patwari's fee and the village expenses, besides the cost of collection including the salary of the treasurer and peons of the mortgagee, in the reduction of the principal and interest due on the mortgage. There was a further provision that the accounts of the debt and the receipts and disbursements of the mortgaged villages shall be made up six

monthly and that if any of the karindas and servants of the mortgagor acted against the wishes of the mortgagee, he shall be liable to dismissal and the mortgagee shall have power to make collections and assessment on his own account.

34. In 1872 and 1873 Seth Lachmandas, the successor of the mortgagee, purchased some mortgaged villages in execution of certain decrees for money held by other persons against Thomas Brown Skinner and believing himself to have become thereby the absolute owner of those villages and to be competent to deal with them as if they (they) were his own pro-party, he, on the 26th December, 1898, as the surviving member of the family of the mortgagee, mortgaged the said villages along with other properties with the Nawab of Rampur. On the 24th September, 1903, he sold the same to the Nawab of Rampur who in turn sold five of the villages now in dispute on the 11th April, 1904, to Naunihal Singh the plaintiff for a sum of Rs. 1,77,000, describing himself as the absolute owner of the properties conveyed.

35. It is urged on behalf of Naunihal Singh that he was a transferee in good faith and for consideration from the Nawab of Rampur who had purchased from Seth Lachmi Das the absolute rights he claimed to have acquired at the auction-sales aforesaid and that he is protected by Article 134 of the Indian Limitation Act from being made liable to a claim for redemption in respect of the original mortgage of the 1st September 1883. Meanwhile Thomas Brown Skinner died without leaving any male issue. In 1906 a suit was brought by Richard Ross Skinner for the possession of the estate which was in the hands of transferees and it was held by their Lordships of the Privy Council eventually on a construction of the will of Thomas Skinner that Thomas Brown Skinner had only a life-estate and that the mortgage granted by Thomas Skinner was ineffectual to convey or give any right over any estate except the tenancy for life of which Thomas Brown Skinner was possessed. Their Lordships remanded the suit for determining the amount of the mortgage money due under the mortgages granted by Thomas Skinner. But before the suit could be re-heard, Richard Ross Skinner died without leaving any male issue and as he too had only a life-interest in the estate his suit abated. A fresh suit for redemption was then brought by George Corbyn Skinner, the next son and heir of Thomas Skinner, but he too died before the decision of the suit. The present suit was then filed by Alice Georgina Skinner the daughter and next heir of Thomas Skinner, for the redemption of the mortgage of the 1st September, 1863, and it is evident that but for Article 134 of the Indian Limitation Act the suit would be within time under Article 148, read with Article 140 of that Act. As between the transferees and the present plaintiff no question of adverse possession can arise, because under Article 140 of the Indian Limitation Act a remainderman or devisee can sue for possession of immovable property devised to him within 12 years from the date when the estate falls into possession. Once a person enters as a tenant for life he cannot hold adversely to the remainderman. An adverse possession for any length of time against a tenant for life is similarly ineffectual against the reversioner or remainderman

whose right to possession only accrues on the death of the tenant for life.

36. Article 134, however, allows only a period of 12 years for a suit to recover possession of immovable property mortgaged and subsequently transferred by the mortgagee for a valuable consideration to be computed from the date of such transfer. It applies to cases where the mortgagee purports to transfer what he is not competent to alienate, that is an interest greater than that of a mortgagee, and it presupposes a mortgage with possession or followed by possession as a necessary incident or ingredient of it because a mortgagee who is not in possession cannot transfer possession to another or give what he does not possess. If the mortgagee acquires possession in some other capacity, the transfer of possession will be deemed to have been made in the capacity, in which it was (rightly or wrongly) acquired and such acquisition cannot be attributed to the mortgage, where the mortgage itself is a simple mortgage or a mortgage not entitling the mortgagee to possession by virtue of its incidents or terms.

37. In this case the villages in question were purchased by Seth Lachmi Das at auction sales in execution of certain decrees for money against Thomas Brown Skinner who was afterwards found to have had only a life-interest therein. It is stated on behalf of the mortgagee that he got possession after the auction-purchases in 1872; but the plaintiff states (para. 8 of the plaint) that the mortgagee used to manage the property and make collections under the usufructuary mortgage effected by Thomas Brown Skinner on the 10th November 1867 in lieu of the moneys due on the mortgage of the 1st September 1863 and certain other mortgages and inasmuch as the mortgage of the 10th November 1867, cannot be deemed to operate beyond the lifetime of Thomas Brown Skinner, the possession of the mortgagee must be deemed to have continued after his death under the mortgage of the 1st September 1863 now sought to be redeemed. There was a provision in the mortgage deed of the 1st September 1863, entitling the mortgagee to obtain possession if the principal and interest due thereon were not regularly paid. During the previous litigation which went up to the Privy Council it does not appear to have been disputed that the mortgagee was placed in possession of the mortgaged property by Thomas Brown Skinner under the mortgage of the 10th November 1867 and as that mortgage failed to be operative beyond the lifetime of Thomas Brown Skinner who died in 1900, it follows that the possession of the disputed villages qua the mortgagee's interest must be deemed to have been held after that date under the mortgage of the 1st September 1863, which it sought to repay. The mortgagee, however, believed to have acquired the interest of the mortgagor by his purchases at auction sales of 1872 and 1873 in execution of the decrees for money held by certain other persons against Thomas Brown Skinner; and the real position of the rights of the parties was not discovered till the correct construction to be placed on the will of Thomas Skinner was determined by their Lordships of the Privy Council on the 4th March 1913. Till then the period of limitation allowed by Article 134 of the Indian Limitation Act for a suit for possession of immovable property mortgaged

and then transferred by the mortgagee to another person for valuable consideration had not expired in respect of the transfer made by Seth Lachhman Das of what was described as an absolute right in favour of the Nawab of Rampur or that made by the latter in favour of Naunihal Singh. The object of Article 134 is to protect transferees for value who have purchased an interest larger than that possessed by the transferor and have been allowed to remain in possession and enjoyment of such larger interest for a period of more than 12 years. In the matter of the mortgaged properties so transferred, it controls Article 148 of the Indian Limitation Act in the same way as it controls Article 140. If the mortgaged property is in possession not of the mortgagee but in that of a transferee from him who claims to have purchased larger interest therein for consideration, what a man is not allowed to do under Article 148 of the Indian Limitation Act he cannot be allowed to do under Article 140 after such possession has been held for more than 12 years. The question is not free from difficulty but in view of the equities of the case and the long and continuous litigation which the transferee had to face both before his possession of 12 years was completed and after it, there is no ground for allowing the remainderman to oust him after such period has expired. It may be that Richard Boss Skinner was suing for possession of the disputed property as much in his own interest as that of his successors, but the order refusing to allow substitution after his death was not challenged and allowed to become final and a remainderman who sues for the redemption of the mortgage cannot escape the consequences which Article 134 prescribes.

38. In regard to the other matters raised in either of these appeals I have nothing to add to the decision of my learned colleague with which I am in agreement. I agree, therefore, in the order proposed.