

*Privy Council Appeal No. 50 of 1928.*

*Allahabad Appeal No. 25 of 1926.*

**Bijai Saran Sahi alias Bijai Bahadur Sahi and others** - - *Appellants*

*v.*

**Rudra Bageshwari Prasad Bahadur Sahi and others** - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 29TH JULY, 1929.

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*Present at the Hearing :*

LORD CARSON.

LORD DARLING.

SIR LANCELOT SANDERSON.

SIR GEORGE LOWNDES.

SIR BINOD MITTER.

[*Delivered by* LORD CARSON.]

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The present suit was brought in the Court of the Subordinate Judge of Gorakhpur by the plaintiffs (first three respondents) to recover possession from the defendants (appellants) of certain villages known as Kanchanpur and Patkoli with mesne profits and costs. The Subordinate Judge made a decree for possession and on appeal the High Court of Judicature at Allahabad by a decree dated the 28th May, 1926, affirmed the decree of the Subordinate Judge. At the hearings before the Courts respectively the defendants (appellants) relied upon their possession under a certain purchase deed dated the 19th November, 1908, of the equity of redemption of one Mahant Karya Bharthi in the said villages, whilst the plaintiffs (respondents) claimed a superior title through certain sale certificates in respect of each of the villages eventuating out of suits filed by the predecessor of the

plaintiffs (respondents). It is unnecessary to go into any detail as to this branch of the controversy between the parties, as the decisions upon this matter in the Courts below have not been challenged in argument before this Board when the only question was whether the plaintiffs (respondents) were entitled to oust the possession of the defendants (appellants) without redeeming certain mortgages dated respectively the 22nd March, 1904, and 26th April, 1904, and which the trial Court had held were valid and subsisting mortgages. Now admittedly these mortgages were not usufructuary mortgages, and as the plaintiffs (respondents) have been held to be and are the owners of the equity of redemption it is impossible to see under what title the defendants (appellants) can claim to resist the decree for possession. As stated in the judgment of the High Court, "They," *i.e.*, the defendants (appellants) "got possession by virtue of the sale of the 19th November, 1908 . . . If the sale is invalid they must surrender possession of the same because their mortgages did not give them any right to possession." Whatever rights (if any) they have under their mortgages they can no doubt enforce in proper proceedings taken for the purpose, but there is no principle or authority which enables the defendants (appellants), as contended by them, "to set up their mortgages as shields against the plaintiff-respondents' claim for possession."

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

the Fifth Circuit

In the Privy Council.

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BIJAI SARAN SAHI alias BIJAI BAHADUR  
SAHI AND OTHERS

v.

RUDRA BAGESHWARI PRASAD BAHADUR  
SADI AND OTHERS.

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DELIVERED BY LORD CARSON.