

Mortgagor was non-suited on the ground that he was a purchaser pending lis. In the said case, one Hazra was a purchaser from the original mortgagor but he failed to make payment of the mortgage amount. The mortgagee-initiated proceedings for foreclosure on 17.7.1945 in which a preliminary decree was passed on 23.12.1946. The respondent purchased part of the equity of redemption from his judgment- debtor, Hazra, after the preliminary decree was passed. The Court found that the decree was not in the form of a foreclosure decree but of a mortgage decree for sale. The final decree was passed after notice to the mortgagors and the said Hazra. It was held as under:

“16. ... Section 91 of the Transfer of Property 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. An execution purchaser therefore of the whole or part of the equity of redemption has the right to redeem the mortgaged property. Such a right is based on the principle that he steps in the shoes of his predecessor-in-title and has therefore the same rights which his predecessor-in-title had before the purchase. Under Section 59-A of the Act also all persons who derive title from the mortgagor are included in the term “mortgagor” and therefore entitled to redeem..... It follows that the respondent having purchased from the said Hazra while the appeal by the said Hazra against the said preliminary decree was pending in the High Court, the doctrine of lis pendens must apply to his purchase and as aforesaid he was bound by the result of that suit. In the view we have taken that the final foreclosure decree was competently passed by the trial court, his right to equity of redemption was extinguished by that decree and he had therefore no longer any right to redeem the said mortgage. His appeal against the said final decree was misconceived and the High Court was in error in allowing it and in passing the said order of remand directing the trial court to reopen the question of redemption and to allow the respondent to participate in proceedings to amend the said preliminary decree.”

Samarendra Nath Sinha v. Krishna Kumar Nag, AIR 1967 SC 1440