

CIVIL REVISION.

Before R. C. Mitter J.

MAHAMMAD ISHAK MIYA CHOWDHURI

v.

ANANDA CHANDRA SHAHA.*

1935

Aug. 27, 28.

Court-fee—Valuation—Mortgage bond—Suit for recovery with an endorsement of full satisfaction—Redemption suit—"Recovery of property mortgaged"—Court-fees Act (VII of 1870), s. 7, cls. ix, x—Suits Valuation Act (VII of 1857), s. 8.

A suit for recovery of a mortgage bond with an endorsement of full satisfaction is in substance a suit for redemption, and *ad valorem* court-fee has to be paid on the sum borrowed, which will also determine the valuation of the suit for the purpose of jurisdiction.

Such a suit is not one for specific performance of a contract as contemplated under clause x of s. 7 of the Court-fees Act.

Section 8 of the Suits Valuation Act does not include cases coming under clause ix of s. 7 of the Court-fees Act.

The phrase "recovery of the property mortgaged" does not mean recovery of possession of the mortgage property from the mortgagee, but is a phrase convertible with the words "to redeem". The ordinary significance of the words "to redeem" is to recover a pledge, to get property freed from a charge or mortgage.

CIVIL RULE obtained under s. 115 of the Code of Civil Procedure by the defendants.

The facts of the case and the arguments in the Rule appear sufficiently in the judgment.

Naresh Chandra Sen Gupta and *Nagendra Chandra Chaudhuri* for the petitioners.

Atul Chandra Gupta, *Bhagirath Chandra Das* and *Ajit Kumar Datta* for the opposite party.

Cur. adv. vult.

*Civil Revision, No. 920 of 1935, against the order of First Munsif of Lakhimpur, dated May 17, 1935.

1935

Mahammad
Ishak Miya
Chaudhuri.

v.

Ananda Chandra
Shaha.

R. C. MITTER J. This Rule has been obtained by defendants Nos. 2 to 4 in a suit instituted by the opposite party No. 1 in the first court of the Munsif of Lakhimpur against them and opposite party No. 2, Jasoda Nandan Banikya, who is defendant No. 1 in the suit. The suit has been valued for the purpose of court-fees and jurisdiction at Rs. 300 only and the question in this Rule is whether the said valuation is correct. That question depends upon the nature of the suit. For the purpose of determining the question, the following allegations made in the plaint is to be considered. The plaintiff admits in paragraph 1 that he borrowed Rs. 10,000 from Brindaban Chandra Banikya, father of defendant No. 1, opposite party, on *Jaistha* 12, 1331, and on that date executed in his favour a mortgage bond, which contained a clause for the payment of compound interest at the rate of Rs. 7-8-0 *per annum*. The other statements in the plaint, material for the purpose of the question raised in the Rule, are that there were part payments and that in the month of *Agrahâyan*, 1340, there was an adjustment of accounts, that the defendant No. 1 granted some remission and agreed to release the mortgage and to deliver up the mortgage bond, if the plaintiff paid Rs. 7,200 only; that Rs. 500 was paid to him in *Agrahâyan*, 1340, Rs. 6,400 in the beginning of *Falgun*, 1340, after some incidents not necessary to notice now, and the balance of Rs. 300 was tendered to him, but he refused to accept the same and to deliver up the mortgage bond with an endorsement on its back that it was satisfied. Thereafter, defendant No. 1 assigned the mortgage to defendants Nos. 2 to 4. This assignment is challenged in the plaint as fictitious, but an alternative prayer is also made, if the said assignment be found to be real. There are five prayers in the plaint. The fourth prayer is the prayer for costs and the fifth is the general prayer. Prayers *ka*, *kha* and *ga* are important. The substance of prayer *ka* is as follows: that on a declaration that the assignment of the mortgage to defendants

Nos. 3 and 4 by defendant No. 1 is fictitious, defendant No. 1 may be directed to receive Rs. 300 from the plaintiff and to deliver to the plaintiff the mortgage bond, which the plaintiff had executed in favour of the father of defendant No. 1, with an endorsement on it that the said mortgage has been satisfied.

1935
 Mahammad
 Ishak Miya
 Chaudhuri.
 v.
 Ananda Chandra
 Shaha.
 R. C. Mitter J.

Prayer *kha* asks the same relief from defendants Nos. 2 to 4, if the assignment of the mortgage to them by defendant No. 1 be found to be real and for consideration.

Prayer *ga* is that, if the defendants do not make the endorsement of satisfaction on the mortgage bond within a time to be fixed by the court, the court may make the said endorsement on the bond and return it to the plaintiff. Defendants Nos. 2 to 4 contend that the suit is a suit for redemption, and so the plaint ought to be stamped *ad valorem* on Rs. 10,000 and the value of the suit should be Rs. 10,000 also for the purpose of jurisdiction. The learned Munsif has overruled that contention and has held that the suit is a suit for specific performance of a contract and has been rightly valued by the plaintiff under s. 7, cl. x of the Court-fees Act. I am afraid the learned Munsif has applied cl. x of s. 7 of the Court-fees Act without a close examination of that clause. That clause deals with only four classes of suits for specific performance, *viz.*, of contracts for sale, mortgage, lease and for specific performance of an award. Even if this suit be regarded as a suit for specific performance of a contract, it would not come within cl. x of s. 7. Mr. Gupta makes no attempt to support the reasons of the learned Munsif on this part of the case, but contends that the suit is for recovery of moveable property, which cannot be valued, the mortgage instrument being for the purpose the property in suit.

1935

Mahammad
Ishak Miya
Chaudhuri.
v.
Ananda Chandra
Shaha.
R. C. Mitter J.

He, accordingly, relies on s. 7, cl. iv (a) of the Court-fees Act. I cannot accept that contention. The suit is not simply for recovery of the mortgage-bond. The prayer is for delivery of the mortgage bond *with an endorsement of full satisfaction*. Reading the plaint as a whole, I am of opinion that the suit in substance is a suit for redemption, the plaintiff coming with a case that a definite sum, *viz.*, Rs. 300 only, is due upon the mortgage and he wants to have the property freed of the mortgage on payment of the said sum of Rs. 300. If the court finds that a larger amount than Rs. 300 is due on the mortgage, it would not be debarred from making a redemption decree in the usual form under general prayer *una*. The case, in my judgment, comes within the first para. of s. 7, cl. ix of the Court-fees Act and a court-fee on Rs. 10,000 has to be paid. The phrase "recovery of the property mortgaged" does not mean recovery of *possession* of the mortgage property from the mortgagee, but is a phrase convertible with the words "redeem". The ordinary significance of the words "*to redeem*" is to *recover* a pledge, to get property freed from a charge or mortgage.

The next question is whether the suit has to be valued for the purpose of jurisdiction at Rs. 10,000. Section 8 of the Suits Valuation Act does not include cases coming under cl. ix of s. 7 of the Court-fees Act. Three views have been taken on this point:—

(1) That in spite of s. 8 of the Suits Valuation Act, the valuation for the purpose of jurisdiction should be the same as is taken for the purpose of assessing court-fees. This view proceeds on the view that s. 8 of the Suits Valuation Act does not *prohibit* the same [*Kedar Singh v. Matabadal Singh* (1); *Jallaldeen Marakayar v. Vijayaswami* (2)].

(1) (1908) I. L. R. 31 All. 44.

(2) (1915) I. L. R. 39 Mad. 447.

(ii) The value of the mortgage property must determine the pecuniary jurisdiction [*Ma Hla Saing v. Ma Su We* (1)].

(iii) The amount found by the court as due on the mortgage [*Sarada Sundari Basu v. Akramannessa Khatun* (2)]. The soundness of this view, in my judgment, is open to great doubt in view of the later decision of the Full Bench in *Bidyadhar Bachar v. Manindra Nath Das* (3).

1935
 Mahammad
 Ishak Miya
 Chaudhuri.
 v.
 Ananda Chandra
 Shaha.
 R. C. Mitter J.

This point, however, need not be further pursued because Mr. Gupta admits that, if the suit is regarded as a suit for redemption, the Munsif would have no jurisdiction to entertain the suit. I accordingly, make the rule absolute, and direct the learned Munsif to return the plaint for presentation to the proper court. The petitioners must have their costs both of this Court and of the lower court incurred by them for the hearing of the preliminary points. I assess the total hearing fee of this Court and of the court below at Rs. 50.

Rule absolute. Case remanded.

G. S.

- (1) (1927) I. L. R. 5 Ran. 499. (2) (1924) I. L. R. 51 Cal. 737.
 (3) (1925) I. L. R. 53 Cal. 14.