

which rent is claimed are lawfully tendered, and set aside the decrees of the Lower Courts in Appeal Suits 112, 113, 115, 117 and 119 to 121 (Summary Suits 92, 93, 95, 97, 99 to 101) and direct that the suits be dismissed with costs, and we reverse the decrees of the Lower Courts in Appeal Suit 122 (Summary Suit 103) and allow plaintiff's claim with costs throughout.

NARAYANA
v.
MUNI.

APPELLATE CIVIL.

*Before Sir Charles A. Turner, Kt., Chief Justice, and
Mr. Justice Brandt.*

RAMUNNI (PLAINTIFF), APPELLANT,

and

SHANKU (DEFENDANT), RESPONDENT.*

1884.
Dec. 16.

Civil Procedure Code, s. 244—Execution proceedings—Revaluation of improvements allowed for in decree.

A mortgagor obtained a decree for redemption on payment of the mortgage amount, together with a further sum assessed as the value of improvements made by the mortgagee. When the decree-holder applied for the execution of the decree it was contended on behalf of the mortgagee that the improvements ought to be revalued as they were at the time of execution of more value than at the date of the decree:

Held, that the mortgagee was entitled to a revaluation in the execution proceedings.

THIS was an appeal against an order of F. H. Wilkinson, District Judge of South Malabar, dated 15th January 1884, rejecting an appeal from an order passed by the District Munsif of Patambi in Civil Miscellaneous Petition No. 114 of 1883.

In a suit on a mortgage, the Court passed a decree for redemption on payment of principal and interest, together with a sum fixed as the value of certain improvements made by the mortgagee. The value of the improvements increased between the passing and the execution of the decree. The mortgagee accordingly filed a petition in the execution proceedings for a revaluation of the improvements, but his petition was rejected by both the Lower Courts. He accordingly appealed to the High Court.

* Appeal against Appellate Order No. 17 of 1884.

RAMUNNI
v.
SHANKU.

Sankaran Nayar for appellant.

Respondent did not appear.

The arguments adduced on this appeal appear sufficiently for the purpose of this report from the judgment of the Court (Turner, C.J., and Brandt, J.).

JUDGMENT.—A mortgagee in possession is liable for waste, and if waste is proved, the mortgagor is entitled to have an account taken and the value of the damage deducted from the mortgage debt: *Weatherington v. Bankes*(1).

The circumstance that the rights of the parties have been ascertained by a decree does not deprive the mortgagor of his equity if the waste is committed subsequently to the decree. Inasmuch as the mortgagee may be entitled to a deduction which he could ordinarily establish by separate suit, the provisions of section 244 of the Civil Procedure Code appear to us to enable him to require the Court executing the decree to take account of the altered circumstances when application is made for the execution of the decree. This appears to give effect to the policy of the law which is adverse to the institution of a fresh suit; the orders of the Courts below are therefore set aside and the case remanded, costs to abide and follow the result.

APPELLATE CIVIL.

Before Mr. Justice Hutchins and Mr. Justice Parker.

MAHOMED (PLAINTIFF), APPELLANT,

and

LAKSHMIPATI (DEFENDANT), RESPONDENT.*

Civil Procedure Code, s. 11—Rent Recovery Act—Act VIII of 1865, Madras, ss. 39, 40, 78—Remedy of tenant aggrieved by notice of attachment.

A tenant having received a notice of attachment under s. 39 of the Rent Recovery Act sued in a District Munsif's Court to have the notice cancelled, no specific damage being alleged :

Held, that the suit did not lie.

SECOND appeal against the decree of T. Weir, Acting District Judge of Madura, in Appeal Suit No. 485 of 1884, reversing the

(1) Sel. Ch. Ca. 31.

* Second Appeal No. 430 of 1885.