APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

RAMA VARMA RAJAH (PLAINTIFF), APPELLANT,

v.

KADAL AND OTHERS (DEFENDANTS), RESPONDENTS.*

1892.
December 22.

Court Fees Act—Act VII of 1870, s. 17—Redemption suit—Claim by mortgagor for rent in same suit—Court fee on appeal.

A suit to redeem a mortgage for Rs. 3,500 and to recover a certain sum on account of rent was dismissed so far as the prayer for redemption was concerned, and also part of the claim for rent was disallowed. It did not appear that the arrears of rent were intended to be set off against the mortgage debt. The plaintiff appealed :

Held, that the Court fee should be computed on the principal amount of the mortgage debt and on the claim which had been disallowed on account of rent.

CASE referred for the orders of the High Court under Civil Procedure Code, s. 617, by R. S. Benson, District Judge of South Malabar.

The case was stated as follows :—

"Under section 617, Civil Procedure Code, and following "the precedent of the reference in *Venkappa* v. *Narasimha*(1), I "have the honour to refer the following question for the orders "of the High Court :—

"In an appeal now pending before me, the plaintiff sued to "redeem a mortgage of Rs. 3,500 with arrears of rent amounting "to Rs. 1,917. Court fee was levied in the lower Court on the "principal sum secured by the instrument of mortgage, viz., on "Rs. 3,500, and the Court, holding that the deed of mortgage "conferred a perpetual tenure, dismissed plaintiff's claim for re-"demption, but allowed him Rs. 672 on account of arrears of rent. "Plaintiff appeals (1) against the decree dismissing his claim for "redemption, and (2) as regards the disallowed portion of the "rent. He has valued the memorandum of appeal on the mortgage "amount, viz., Rs. 3,500, and has paid Court fee calculated on "that amount. The question is whether the appeal has been "correctly stamped.

* Referred Case No. 38 of 1892.

(1) I.L.R., 10 Mad., 187.

RAMA VARMA RAJAH v. KADAR.

"The appellant argues that the stamp is sufficient and he "relies on the rulings in *Zamorin of Calicut* v. *Narayana*(1), *Subramanya* v. *Kannan*(2), and *Reference under Court Fees Act, s.* 5,(3). None of these cases, however, appears to me to decide "the exact question raised in the present appeal.

"In *Zamorin of Calicut* v. *Narayana*(1), the plaintiff sued to "redeem a mortgage agreeing to pay to the defendants whatever "sum was found by the Court to be due for their improvements. "The determination of the value of improvements was not a relief "which the plaintiff sought, but was one which the Court had to "consider in deciding as to the conditions under which the relief "claimed by the plaintiff, namely the recovery of the property, "was to be granted. Further, the question of improvements, of "which the value was unascertained at the time of suit, was one "which the Court had not to decide until the right to redeem was "established. Under these circumstances, it was ruled that it was "not necessary to take this unascertained value of improvement "into account in valuing the suit for the purpose of jurisdiction. "The *dictum* was one purely on a question of jurisdiction, and "relating to a relief claimed by the defendant in the suit.

"The second case of *Subramanya* v. *Kannan*(2), was also on a "question of jurisdiction. The plaintiff in that case sought to "redeem a kanom of Rs. 2,000, with arrears of rent amounting to "Rs. 900, and it was held that though micharom may be payable "every year by the mortgagee to the mortgagor, yet when it is "allowed to remain in arrear and to accumulate until a suit is "brought to redeem, it becomes a matter of account to be taken "between the mortgagor and mortgagee, and it was decided that "the suit was cognizable by a District Munsif.

"The facts in the third case, *Reference under Court Fees Act, "s.* 5,(3) were very similar to those in the present case; but the "questions there decided, to quote the words of the judgment, "were 'whether in a suit for the redemption of a kanom, institu-"'tion fee ought to be paid on the kanom debt as it originally "'stood or on so much of it as was actually due at the date of the "'suit after setting off against it arrears of rent.' It was decided "that the institution fee must be computed on the kanom debt as

(1) I.L.R., 5 Mad., 284. (2) C.R.P. No. 387 of 1889 unreported.
(3) I.L.R., 14 Mad., 480.

"it originally stood. The question whether the arrears of rent "claimed should be separately charged was not considered and "decided.

"All the above cases proceeded upon the assumption that "suits by landlords in Malabar to recover property from their "kanom tenants are purely and technically redemption suits. "Whether a kanom is a lease or a mortgage has to be decided "by the Court according to the circumstances of each particular case, "*Silapani* v. *Ashtamurti Nambudri*(1). It will be observed that "in every kanom document there are two distinct contracts by "the tenant (1) to surrender the property to the landlord after "a stated period, and (2) to pay a stipulated rent to the land-"lord annually. The landlord is thus at liberty to seek a relief "on either of these stipulations. He can sue for rent alone when "it falls due, *Shaikh Rautan* v. *Kadangot Shupan*(2), or he can "sue for the recovery of the property when the stipulated time "arrives, in which latter case he can enforce the two remedies "together (section 44, Civil Procedure Code). That he is en-"abled to sue for the rent alone shows that the claim for rent is "a distinct cause of action independently of the claim for re-"demption; otherwise a jenmi, who brings a suit for rent alone, "would be precluded from afterwards bringing a suit for redemp-"tion (section 43, Civil Procedure Code). If, then, the two "reliefs are distinct, the one can still be maintained if the other "fails, so that, if the right to redeem fails on the ground either "that the claim is premature, or that the grant is perpetual, the "right to recover the arrears of macharom still enures and can "be enforced.

"If, therefore, the two reliefs are separate and embrace two "distinct subjects, they must, it would seem, under section 17 of "the Court Fees Act, be separately charged. Otherwise there "arises this anomaly: Suppose the mortgage sought to be re-"deemed is Rs. 1,000 and the arrear of rent claimed is Rs. 3,000 "(such cases are not rare in this district). Suppose, also, that the "right to redeem is disallowed by the Court, as in the present "case, but that the claim for rent is found in favour of the mort-"gagor. Can the Court give a decree for rent of Rs. 3,000 when

(1) I.L.R., 3 Mad., 382. (2) 1 M.H.C.R., 112.

RAMA VARMA RAJAH v. KADAR.

"the suit is valued as a redemption suit and the Court fee is paid "on Rs. 1,000 only?

"No doubt micharom becomes a matter of account under "certain circumstances, *e.g.*, when it is allowed to remain in arrear "and redemption is decreed in favour of the mortgagor. The "Court has then to see what sum is due by the mortgagor to the "mortgagee, and has, with this object, to take into account the "sum due by the mortgagee to the mortgagor; but this happens "only when the mortgagor succeeds in his claim for redemption, "and the suit is framed purely and technically as a redemption "suit. Where, however, as in the present case, a relief in respect "of rent is sought independently of the claim for redemption, the "former should, it is submitted, be treated as a separate money "claim and Court fee should be levied separately on such claim "under section 17 of the Court Fees Act. Otherwise it makes an "anomalous distinction between suits where rent is disputed, and "suits where the value of improvements is disputed. In the "latter, the mortgagor is required to pay, when he appeals, Court "fee on the value of improvements which he disputes. For these "reasons, I doubt the correctness of the present practice of "levying Court fee in all cases on the amount secured by the "kanom instrument without reference to the amount of arrears of "rent sought to be recovered in the same suit. I am, however, "unwilling to alter the practice without a direct ruling of the "High Court. It is a question of considerable fiscal importance "in this district."

Plaintiff was not represented.

Sankara Menon for defendant No. 2.

JUDGMENT.—The claim to arrears of rent and the right to redeem are two distinct causes of action. It does not appear that the arrears were intended to be set off against the mortgage debt and rendered items of account to be taken between the mortgagor and mortgagee.

The District Judge is right in holding that the Court fee ought to be computed on the principal amount of the panayom debt and on the amount of arrears of rent disallowed by the Subordinate Judge and claimed in appeal.