

MUTHU
v.
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that any such admission was made. On the contrary, the second paragraph of the written statement commences with a denial that the temple is a common place of worship, either for plaintiff or other Kammalas or for other Hindu castes. It does not appear that the trustees were nominated by or subject to the confirmation of the Government or any public officer. Unless, therefore, the endowment was one which would have fallen under the provisions of Regulation VII of 1817, it will not fall under the provisions of Act XX of 1863. See *Fakurudin Sahib v. Acken Sahib*(1) and *Jan Ali v. Ram Nath Mundul*(2). We do not think this case can be disposed of without recording evidence. We must, therefore, set aside the decree of the District Judge and remand the suit for rehearing. The costs will follow the result.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Davies.*

RAMASAMI (PLAINTIFF), APPELLANT,

v.

SAMI AND OTHERS (DEFENDANTS), RESPONDENTS.*

1893.
August 29.

Transfer of Property Act—Act IV of 1882, ss. 92, 93—Decree for redemption—Mortgagor's failure to pay amount due within period fixed—Subsequent suit, no order under section 93 having been made—Res judicata.

A decree under section 92 of the Transfer of Property Act becomes a final decree on the expiry of the time limited thereby, although no order is passed under section 93: accordingly, no subsequent suit for redemption can be maintained.

SECOND APPEAL against the decree of C. Venkobachariar, Subordinate Judge of Tanjore, in appeal suit No. 365 of 1892, affirming the decree of T. M. Adinarayana Chettiar, District Munsif of Mannargudi, in original suit No. 66 of 1891.

Suit for redemption of a mortgage executed in 1886 by the plaintiff's vendor to the predecessor in title of the defendants under which it appeared that possession had passed to the mortgagee.

(1) I.L.R., 2 Mad., 197.

(2) I.L.R., 8 Calc., 32.

* Second Appeal No. 241 of 1893.

The plaintiff had previously brought original suit No. 241 of 1886 on the file of the District Munsif of Mannargudi for the redemption of the same mortgage, and on 30th September 1887 a decree was passed which directed that "on the plaintiff paying to the defendants Nos. 2 to 7 or depositing in Court within three months from this date Rs. 67, he will be entitled to take possession of the plaint items Nos. 1 to 6, and in default, he will be debarred from redeeming them thereafter." This decree was affirmed on appeal and in 1889 the plaintiff applied in execution for an order that possession be delivered to him on payment of the amount specified. He obtained the order sought and gained possession of the land, but the High Court reversed the order and dismissed his application on the ground that it was too late.

The prayer of the present plaint was for a decree "directing the defendants to receive from plaintiff the mortgage debt and to return to him all the documents relating to the mortgage, and holding that the mortgage has been redeemed and for such other relief as the nature of the suit may admit." The third issue framed in the suit was as follows:—"Whether the plaintiff's right of redemption has been extinguished by the decree in the former suit No. 241 of 1886?" The plaintiff's contention was that the equity of redemption was kept alive by reason of the fact that no order had been made under Transfer of Property Act, s. 93.

The District Munsif decided this issue in favour of the defendant pointing out that the mortgage in question was not in his view a usufructuary mortgage and also expressing the opinion that the Transfer of Property Act was inapplicable to the suit, and he accordingly dismissed the suit.

The Subordinate Judge on appeal affirmed this decree concurring in the opinion that the Transfer of Property Act was inapplicable, and observing "the deed of mortgage is not on record and it is not easy to say what the real nature of the mortgage is, but as it is merged in the decree, the latter is the proper guide for determining the question."

Narasimha Chavariar for appellant.

Krishnasami Ayyar for respondent.

JUDGMENT.—We consider that the decree in suit No. 241 of 1886 on the Mannargudi Munsif's file was a final decree inasmuch as it decreed according to the last clause of section 92 of the Transfer of Property Act, that in case of default in payment

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within the stipulated time, the plaintiff was to be debarred of his right of redemption. Orders passed under section 93 are, in our opinion, merely supplementary to the decree under section 92, showing whether the terms of the decree have or have not been fulfilled. It is clear that in this case when the three months' time allowed in the decree had elapsed without payment being made, no extension of time for payment having been granted, the decree became a final decree without any further orders being required. That decree then being a final one after confirmation in appeal, the present suit being based on precisely the same cause of action as that suit is, of course, barred as *res judicata*.

The second appeal fails and is dismissed with costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Shephard.

1893.
August 8.

KUNHAYEN HAJI (PLAINTIFF), APPELLANT,

v.

MAYAN (DEFENDANT NO. 2), RESPONDENT. *

Transfer of Property Act—Act IV of 1882, ss. 108, sub-s. (e), 117—Agricultural lease—Lease of a coffee garden—Destruction of plants by fire—Voidability of lease.

The plaintiff was the assignee of the right and title of the lessor and the defendant was the lessee of a coffee garden, under an instrument which was held to constitute a lease of the coffee plants only. In a suit to recover the annual payment reserved under the lease, it appeared that the coffee plants had been destroyed by fire and the garden had been consequently abandoned by the defendant before the period to which the claim related :

Held, that the plaintiff was not entitled to recover.

Per cur : We are clearly of opinion that a lease of a coffee garden is not an agricultural lease within the meaning of Transfer of Property Act, § 117.

SECOND APPEAL against the decree of E. K. Krishnan, Subordinate Judge of North Malabar, in appeal suit No. 823 of 1891, reversing the decree of J. A. De'Rozario, District Munsif of Vytri, in original suit No. 41 of 1891.

The plaintiff sued as the assignee of the title and interest of

* Second Appeal No. 1624 of 1892.