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“party making the change, when not required for purposes of repair, is absolutely responsible for any damage which it occasions; but in so far as he can use the wall in the improvement of his own property without injury to the wall or the adjoining property, there is no good reason why he should not be permitted to do so.” On further consideration, however, I have arrived at the conclusion that the better rule to lay down is the simpler one enunciated in *Watson v. Gray*(1) since it will compel such of the owners of party-walls as are desirous of adding to, or otherwise materially interfering with, the common property to obtain beforehand the consent of the others interested in it to the change being effected, and consequently is the one less likely to lead to disputes among joint holders of party-walls. I agree, therefore, with my learned colleague in giving a decree to the appellant as proposed.

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## APPELLATE CIVIL—FULL BENCH.

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

1895.  
August 6, 7,  
September 6,  
October 24,  
November 1.

VALLABHA VALIYA RAJAH (COUNTER-PETITIONER), APPELLANT,

v.

VEDAPURATTI (PETITIONER), RESPONDENT.\*

*Transfer of Property Act—Act IV of 1882, ss. 87, 89, 92, 93.*

A mortgagor who has made default in payment of the mortgage money within the time limited by the decree in a suit for redemption is not entitled to apply for execution of the decree after the time limited.

SECOND APPEAL against the order of R. S. Benson, District Judge of South Malabar, on civil miscellaneous appeal No. 122 of 1893, reversing the order of E. K. Krishnan, Subordinate Judge of Palghat, made on miscellaneous petition No. 706 of 1893 in the matter of original suit No. 3 of 1889.

The plaintiff sued to redeem a kanom, and a decree was passed directing that the mortgage premises be delivered to him on his payment of the mortgage money to defendant No. 31 within six

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(1) L.R., 14 Ch. D., 192.

\* Appeal against Appellate Order No. 32 of 1894.

months of the final decree, and providing that in default of payment the property be sold. The money was not paid within the prescribed period, but 25 days after it had expired the plaintiff paid the amount into Court and got possession of the property. Defendant No. 31 refused to receive the money, and now prayed that the property should be restored to her on the ground that the plaintiff was not entitled to execute the decree after the expiry of the period limited thereby.

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The Subordinate Judge rejected the petition with reference to the ruling in *Kanara Kurup v. Govinda Kurup*(1), and he directed that the property should remain with the plaintiff. On appeal the District Judge reversed the order of the Subordinate Judge with reference to the ruling in *Elayadath v. Krishnan*(2).

The plaintiff preferred this second appeal.

*Sankaran Nayar* for appellant.

*Sundara Ayyar* for respondent.

The second appeal came on for hearing before SHEPHERD and BEST, JJ., who made the following order of reference to the Full Bench :—

ORDER OF REFERENCE TO THE FULL BENCH :—The decree in this case directs that, upon the plaintiff paying a certain sum into Court on or before a certain day, the defendants shall deliver up the mortgaged property to the plaintiff, and “that, if such payment is not made on or before the said date, the said property be sold.” The money was not paid within the time limited, but it was paid into Court a few days afterwards and the property was put in to the possession of the plaintiff. The defendant thereupon, refusing to receive the money, applied for restoration of the property on the ground that it was no longer open to the plaintiff, after the expiration of the time limited, to apply for execution of the decree. The District Judge on appeal ruled in favour of the defendant on the authority of the decision in *Elayadath v. Krishna*(2), by which he held that the case was governed. In the case cited the point decided was that a plaintiff, having a decree similar to that now before us, but not containing any direction for sale, could not be allowed to execute it after the expiration of the time limited. This decision is, in our opinion, open to grave doubt, and, as there are other decisions in conflict with it and the question is of some

(1) I.L.R., 16 Mad., 214.

(2) I.L.R., 13 Mad., 267.

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importance, we think it right to refer it to a Full Bench. The other decisions to which we refer are to be found in *Ramunni v. Brahma Dattan*(1), *Kanara Kurup v. Govinda Kurup*(2) and an unreported case. In Calcutta also the High Court has taken the view favourable to the decree-holder—see cases cited in *Ajudhia Pershad v. Baldeo Singh*(3).

On principle, as it appears to us, these decisions are right. In the terms of the decree itself there are no words indicating a forfeiture of the mortgagor's right on default being made by him in payment within the fixed period. It is for his benefit that the term for payment is introduced. On default the mortgagee is at liberty to apply for an order for sale. To allow him, by remaining passive after default made, to retain possession notwithstanding an offer of the mortgagor to redeem, is practically to hold that upon default made he becomes absolute proprietor. The mortgagee is thus placed in a higher position than he would be if there were in the decree a direction for foreclosure on default, for in that case clearly the direction would need to be carried into effect by an order under section 93 of the Transfer of Property Act, and until that was done the right of the mortgagee would not become absolute. On the other hand, according to the construction placed upon the decree and upon the Act in the judgment in *Kanara Kurup v. Govinda Kurup*(2) the mortgagee is placed in such a position that, while he can always recover his money by insisting on a sale, he cannot gain more than the money due to him by remaining passive and not applying for a sale. We desire to adopt the reasoning used by MUTTUSAMI AYYAR J. in *Kanara Kurup v. Govinda Kurup*(2). As it must be admitted that the mortgagor may, on the mortgagee applying for an order for sale, come in and ask for time or offer to redeem even at the last moment before the sale is concluded, may he not anticipate the action of the mortgagee and offer to redeem before a sale is threatened?

The question we have to refer is, whether, after the expiration of the time mentioned in the decree and before any order for sale, the mortgagor is precluded from redeeming the property?

The case then came on for hearing before the Full Bench.

Mr. K. Brown and Sankaran Nayar for appellants.

(1) I.L.R., 15 Mad., 366, 370.

(2) I.L.R., 16 Mad., 214.

(3) I.L.R., 21 Calc., 818, 824.

The Advocate-General (Hon. Mr. *Spring Branson*) and *Sundara Ayyar* for respondent.

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COLLINS, C. J.—The question referred to a Full Bench by SHEPARD and BEST, JJ., is “whether, after the time mentioned in the decree and before any order for sale, the mortgagor is precluded from redeeming the property?” The decree in question directs that, upon the plaintiff (the mortgagor) paying a certain sum into Court on or before a day certain, the defendants (the mortgagees) shall deliver up the mortgaged property to the plaintiff and “that, if such payment be not made on or before the said date, the said property be sold.” The money was not paid within the time limited, but it was paid into Court after that date and the property was put in possession of the plaintiff under the decree. The mortgagee refused to receive the money, and applied for restoration of the property on the ground that it was no longer open to the plaintiff, after the expiration of the time limited, to apply for execution of the decree. The District Judge ruled in favour of the mortgagee on the authority of *Elayadath v. Krishna*(1).

I am of opinion that the District Judge was right and that the decision in *Elayadath v. Krishna*(1) is good law. The Judges in that case (MUTTUSAMI AYYAR and PARKER, JJ.,) held that the application by the mortgagor for permission to pay after the expiration of the period fixed in the decree does not fall under the proviso of section 93 of the Transfer of Property Act. There was no application by the mortgagee for foreclosing the right of redemption. Sections 92 and 93, Transfer of Property Act, must be read together, and the proviso of the latter section has no application when the mortgagee does not apply for foreclosure or when the original decree does not contain the last clause mentioned in section 92. The case of *Ramunni v. Brahma Dattan*(2) is not in conflict with *Elayadath v. Krishna*(1). In *Ramunni v. Brahma Dattan*(2) the jenmi of land in Malabar sued in 1886 to redeem a kanom of 1849 and obtained a decree which merely directed the surrender of the land to the plaintiff on payment of a certain sum within three months from date of decree. The decree remained unexecuted, the money not having been paid. The jenmi brought another suit to redeem the same kanom, and the Court held the suit was not barred by the former decree. The question was referred owing to the observations

(1) I.L.R., 13 Mad., 267.

(2) I.L.R., 15 Mad., 366, 370.

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of MUTTUSAMI AYYAR J. in *Kanara Kurup v. Govinda Kurup*(1), but it is to be observed that, although both Judges (MUTTUSAMI AYYAR and BEST, JJ.) were of opinion that the order appealed against could not be supported, they differed in their reasons—BEST, J. holding that, as the defendants (the mortgagees) had accepted the amount tendered by the plaintiff, the defendants must be held to have waived their right to object to the same as paid out of time. MUTTUSAMI AYYAR J. apparently overlooked the decision in *Elayadath v. Krishna*(2), and in his judgment observed that, the mortgagee never having obtained an order for sale under section 93 of the Transfer of Property Act, the mortgagor's right of redemption never became extinct and the necessity for the sale was obviated by payment before any order was made under section 93. I do not think that was the question the learned Judge had to decide. The point in dispute was, whether the plaintiff, who had made default in payment of the money within the time fixed by the decree, had a right to apply for execution of that decree after the time limited, and I am clearly of opinion that he had no such right in execution. The cases cited in the Calcutta reports do not appear to me to have a material bearing on the point in question, and the Bombay decisions appear to support the decision in *Elayadah v. Krishna*(2).

I answer the question referred in the affirmative so far as it relates to the execution of the decree. It appears to me that the terms of the reference are somewhat too wide, as the defendant's only contention in the case was that it was not open to the plaintiff after the time limited to apply for execution of the decree, and that question I have decided in favour of the defendant.

PARKER, J.—The question referred to the Full Bench is whether, after the expiration of the time mentioned in the decree and before any order for sale, the mortgagor is precluded from redeeming the property.

In the case which gave rise to the reference the decree directed that, upon the mortgagor (plaintiff) paying a certain sum into Court on or before a certain day, defendants should deliver up the mortgaged property to plaintiff, and that if such payment were not made on or before the said date, the property be sold. The money was not paid within the time limited, but it was paid

(1) I.L.R., 16 Mad., 214.

(2) I.L.R., 13 Mad., 267.

on a later date and the Court put plaintiff into possession. The mortgagee refused to receive the money and applied for restoration on the ground that it was no longer open to plaintiff after the expiration of the time limited to apply for execution of the decree. The District Judge decided in defendant's favour on the strength of the ruling in *Elayadath v. Krishna*(1). \*The learned Judges who made this reference to the Full Bench consider that this ruling is in conflict with the cases in *Ramuni v. Brahma Dattan*(2) and *Kanara Kurup v. Govinda Kurup*(3), and also refer to *Ajudhia Pershad v. Baldeo Singh*(4) which later decisions, they state, they would prefer to follow.

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*Elayadath v. Krishna*(1), *Manavikraman v. Unniappan*(5), *Ramuni v. Brahma Dattan*(2), *Kanara Kurup v. Govind Kurup*(3), *Ramasami v. Sami*(6), *Poresh Nath Mojumdar v. Ramjodu Mojumdar*(7), *Ajudhia Pershad v. Baldeo Singh*(4), *Mahant Ishwargar v. Chudasama Manabhai*(8), and *Patloji v. Ganu*(9) were referred to in the argument. It will be observed that both the Calcutta cases were suits by the mortgagee, whereas all the Madras and Bombay cases were, like the present, suits by the mortgagor. It does not appear to me that the Calcutta cases have any application. The first *Poresh Nath Mojumdar v. Ramjodu Mojumdar*(7) was a foreclosure action in which plaintiff got possession without taking the proceedings prescribed by section 87 of the Transfer of Property Act. It was held that as he had not done so it was still open to the mortgagor (defendant) to redeem. In the second case *Ajudhia Pershad v. Baldeo Singh*(4) it was held that an application by plaintiff (mortgagee) for sale under section 89 did not require to be in the form prescribed in section 235, Code of Civil Procedure, and was of the nature of an application for a decree absolute.

The Bombay cases are in accord with *Elayadath v. Krishna*(1) and *Manavikraman v. Unniappan*(5). In the former (*Mahant Ishwargar v. Chudasama Manabhai*(8)) it was held that the Court in execution could not extend the time fixed by the decree, and in the latter *Patloji v. Ganu*(9) that the time ran from the date of the original decree. In the latter case the decree directed that, if

(1) I.L.R., 13 Mad., 267.

(3) I.L.R., 16 Mad., 214.

(5) I.L.R., 15 Mad., 170.

(7) I.L.R., 16 Calc., 246.

(9) I.L.R., 15 Bom., 370.

(2) I.L.R., 15 Mad., 336.

(4) I.L.R., 21 Calc., 818, 824.

(6) I.L.R., 17 Mad., 96.

(8) I.L.R., 13 Bom., 106.

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the money be not paid within the time limited, the plaintiff (mortgagor) should be for ever foreclosed.

Passing to the Madras cases, it does not appear to me that the decision in *Ramunni v. Brahma Dattan*(1) is in conflict with *Elayadath v. Krishna*(2). The former case *Ramunni v. Brahma Dattan*(1) was one of a second suit for redemption by the plaintiff (mortgagor). The first suit had remained unexecuted since plaintiff had not paid the money within the time limited. The decree contained no declaration as to foreclosure or sale. It was held that, though the first decree could not be executed, the relation of mortgagor and mortgagee still continued to subsist until it was terminated either by foreclosure or sale, and hence that a second suit for redemption would lie. This decision is not inconsistent with *Elayadath v. Krishna*(2), which simply held that a decree could not be executed after expiration of the time limited, or with *Ramasami v. Sami*(3), where it was held that no second suit would lie since that first decree directed that, if the money be not paid within the time limited, redemption should be barred.

It is however difficult to reconcile the decision in *Kanara Kurup v. Govinda Kurup*(4) with the earlier decisions. In that case the mortgagor (plaintiff) obtained a decree for redemption on 16th March 1889 by which six months' time was given for the payment of the sum fixed. The Appellate Court simply confirmed the original decree in June 1890, but the appellate decree gave no extension of time for the payment of the money notwithstanding that an application for further time had been made by the plaintiff in an execution petition put in in February 1890. This petition had, however, been presented after the time fixed by the original decree had expired. The Subordinate Judge executed the decree on the ground that plaintiff's right to relief could only be extinguished by an order under section 93 of the Transfer of Property Act. It seems to me that the order of the Subordinate Judge to execute the decree after it was at an end was wrong. See *Elayadath v. Krishna*(2), *Mahant Ishwargar v. Chudasama Manabhai*(5), and *Patloji v. Ganu*(6). On a Letters Patent Appeal being preferred, the learned Judges upheld the action of the Subordinate Judge in executing the decree, but on different grounds.

(1) I.L.R., 15 Mad., 366.

(2) I.L.R., 13 Mad., 267.

(3) I.L.R., 17 Mad., 96.

(4) I.L.R., 16 Mad., 214.

(5) I.L.R., 13 Bom., 106.

(6) I.L.R., 15 Bom., 370.

Best J. was of opinion that as defendants had accepted the money they must be held to have waived their right to object to the sum as paid out of time, while MUTTUSAMI AYYAR, J. held that, as the mortgagee never obtained any order for sale and as the money was paid before the equity of redemption was extinct, the order of the Subordinate Judge was right.

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In the case which gave rise to the present reference the mortgagee has refused to accept the money and therefore cannot be said to have waived his right. The special ground on which Best, J. based his decision does not apply here. With regard to the judgment of MUTTUSAMI AYYAR, J. I can only say with great deference that I think the learned Judge overlooked the decisions in *Elayadath v. Krishna*(1) and *Manavikraman v. Umniappan*(2) and mistook the real question that was before him. In all the remarks that he makes as to the scheme of the Transfer of Property Act I entirely agree. I also agree that the mortgagor can redeem at any time before the right of redemption becomes extinct either under the Transfer of Property Act or by the Law of Limitation. But the question under consideration was one of procedure, not of substantive law, and though the plaintiff could bring a second suit for redemption (provided such a suit be not barred), or might pay the money into Court if defendant applied for sale, I do not see how this right to do either of those things can affect the Law of Limitation and enable him to execute a redemption decree after the expiration of the time limited.

The right of applying for sale after the time limited is the right of the defendant-mortgagee, and if he does not choose to exercise that right he cannot be compelled to do so. He may prefer to remain in possession, and may consider that he could not find a better investment for his capital if he were paid off. He may (it is true) be compelled to accept payment if the mortgagor pays the money into Court within the time limited or succeeds, after the expiration of that time, in a second redemption suit. But if he prefers to retain the property, he need not apply for sale, and he may possibly hope that the right of redemption will become barred before the mortgagor is in a position to sue again.

I find it impossible to reply to the question referred to the Full Bench by a simple affirmative or negative. If by the question is

(1) I.L.R., 13 Mad., 267.

(2) I.L.R., 15 Mad., 170.



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intended "Is the mortgagor precluded from executing the decree?" I would answer in the affirmative; but if the question be "Is he precluded from redeeming the property?" the answer seems to be that it all depends upon the circumstances of the case. Provided the mortgagor's right of redemption be not extinct he can bring a fresh suit, or he can redeem if the mortgagee applies for sale; but he cannot himself apply for execution of the decree after the expiration of the time limited.

I would reply to the referring Bench accordingly. In the case under reference it seems to me that the decision of the District Judge was right.

SHEPARD, J.—The question raised by this reference is stated in terms larger than the actual case requires. The precise question should have been whether, under the circumstances mentioned, the mortgagor is precluded from redeeming the property under the decree. This question, however, almost necessarily involves the larger question, what remedy is open to the mortgagor after the expiration of the time limited by the decree for the payment of the mortgage money. That the right of the mortgagor still remains, notwithstanding the expiration of the period so fixed, there can be no doubt. Whether the decree be made in a suit by the mortgagee or in the mortgagor's suit for redemption, whether the decree contains a direction for sale or a direction for foreclosure, it is equally open to the mortgagor to come in, on an application being made by the mortgagee either under the 87th or under the 93rd section, and pay the mortgage money into Court. The 93rd section contains an express provision indicating that the right of redemption is extinguished only upon the passing of an order absolute for foreclosure or a similar order for sale under the provisions of the same section. And even after such latter order has been passed, there still remains to the mortgagor the right, which, under the provisions of the Civil Procedure Code, every judgment-debtor has, to prevent the sale by paying money into Court. While it is thus clear that the mortgagor, when put on the defensive by a hostile application made on the mortgagee's behalf, has the means of making good his right of redemption at any time before the actual sale takes place, it has to be seen in what manner he can assert his right against a mortgagee who remains quiescent and makes no application for an order absolute. The 93rd section of the Act, which is supplementary to the preceding section and has

to be read with it, says: "if payment is made of such amount and of such subsequent costs as are mentioned in section 94, the plaintiff shall, if necessary, be put into possession of the mortgaged property." A like provision is contained in the 87th and in the 89th sections, except that in the latter a payment "on the day fixed as aforesaid" is pre-supposed. Although the language of the other two sections is not so precise, I think it is evidently intended that in all three cases alike the payment is to be made on the day fixed. That being so, the mortgagor having lost the opportunity of recovering possession under the first paragraph of the 93rd section, must, unless the proviso can be called in aid, assert his right of redemption otherwise than under the decree. The proviso in the 93rd section authorizing the Court upon good cause shown to postpone the day fixed for payment is similar to that in the 87th section, but curiously in the 89th section, which is the section declaring the course to be taken in the case of a decree for sale, there is no such proviso. It is quite clear, as was pointed out in *Elayadath v. Krishna*(1) that the proviso cannot be intended to operate except in cases where the decree for redemption contains a clause similar to that prescribed by the last paragraph of the 92nd section. Reading the 87th section and the 93rd section together, I also think that the proviso was only intended to come into play when an application has been made by the mortgagee for the final order to which he may be entitled. That seems to have been the opinion of the learned Judges who heard the appeal in *Elayadath v. Krishna*(1); (see also *Mahant Ishwargar v. Chudasama Manabhai*(2)). The point did not arise for decision, because the decree under consideration stopped short with the order for payment of the mortgage money within three months and contained no order for sale on default. In the two cases where it was held that the mortgagor could proceed under the decree even after the lapse of the six months, the judgments are not founded on the proviso enabling the Court to give time. In the Madras case *Kanara Kurup v. Govinda Kurup*(3) MUTTUSAMI AYYAR, J., dwells on the circumstance that the mortgagor's right of redemption is not lost until the actual sale takes place. The learned Judge says the real question is "whether on the expiration of six months the

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(1) I.L.R., 13 Mad., 267, 268.

(2) I.L.R., 13 Bom., 109.

(3) I.L.R., 13 Mad., 214, 218.

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right of redemption becomes extinct under Act IV of 1882." With great deference I must say that I do not think that was the real question which he had to decide. What he had to determine was whether the mortgagor, not having applied within the six months, was entitled to an order for the delivery of the mortgaged property on payment of the mortgage money. Undoubtedly the mortgagor had not lost his right of redemption, but it did not follow that he was entitled to make it good by an application for execution of the decree. The possibility of a second suit for redemption being brought does not seem to have been noticed. In the Calcutta case *Poresh Nath Mojumdar v. Ramjodu Mojumdar* (1) the decree had been made in a foreclosure suit, and, although after the expiration of the six months no order absolute was made under the 87th section, the mortgagee obtained an order and under it got possession. The mortgagor subsequently brought the money into Court and applied for redemption of the property. In this case again, as it appears to me, the right of redemption was clearly not lost to the mortgagor. The Court, proceeding partly on the English cases, held that the mortgagor's application ought to be allowed. A lucid statement of the English practice in foreclosure suits is given by the late Master of the Rolls in *Campbell v. Holyland* (2). According to that practice the Court has a discretion to enlarge the time for payment. This may be done either on the independent motion of the mortgagor, or on the hearing of an application to make the foreclosure absolute; *Alden v. Foster* (3) *Jones v. Creswicke* (4). Even after the foreclosure is made absolute, it is only in point of form that the order is final, for the Court still has a discretion to treat the parties as mortgagor and mortgagee. The practice prescribed by the Act so far follows the English practice that in a foreclosure or redemption suit there is first an interim order fixing a time for payment, and, secondly, a final order for foreclosure absolute. Until this latter is passed under the 87th or 93rd section, as the case may be, I do not think the mortgagor's right of redemption is lost; but, except in the provision already mentioned, I do not find anything in the Act to justify the notion that the English practice as to enlarging the time for payment was intended to be followed. In that practice a wide distinction is

(1) I.L.R., 16 Cal., 246.

(2) 5 Beav., 592.

(3) L.R., 7 Ch. D., 168.

(4) 9 Sim., 307, 317.

made between foreclosure suits and redemption suits, applications for enlargement being rarely granted in the latter case. See *Faulkner v. Bolton*(1), where, on default of payment, the Vice-Chancellor refused to allow the plaintiff to redeem and dismissed the bill. No sign of such a distinction is to be found in the Act. It appears to me that, if the Legislature had intended that the mortgagor should be allowed to come in after the day fixed and apply on his own motion for enlargement of the time, they would have recognized this distinction and framed some rules for the guidance of the Court. It is only reasonable to hold that the mortgagor, if seeking to take advantage of the decree, should be kept strictly to its terms, and that on the other hand, the mortgagee should not, perhaps many months after the passing of the fixed day, be called upon without notice to find a fresh investment for his money.

This view of the law is supported by the series of cases in which it has been held in this Court that a mortgagor, not having prosecuted the decree obtained by him in a redemption suit, is at liberty to bring a second suit for redemption, for, if these cases are good law, the mortgagor cannot complain that he is without a remedy. According to those cases *Sami v. Somasundram*(2), *Periandi v. Angappa*(3), *Karuthasami v. Jaganatha*(4), *Ramunni v. Brahma Dattan*(5) and *Ramasami v. Sami*(6) the mortgagor who has let pass the time for executing his decree is in much the same position as a mortgagor in England whose suit has been dismissed for want of prosecution. The principle involved in them derives a qualified support from the observation of the Judicial Committee in *Hari Raji Chiplun Kar v. Shapurji Hormasji Shet*(7) where the case in *Periandi v. Angappa*(3) was cited in argument. It seems to me that it is too late for us to question those cases. It was pointed out that in them the decrees under consideration contained no direction for sale or foreclosure, but in my opinion the addition of such a direction, inasmuch as it does not by itself extinguish the right of redemption, makes no difference. Apart from these cases, I should, for the reasons already stated, arrive at the same conclusion as to the rights of a mortgagor under his decree. If the mortgagor is

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(1) 7 Sim., 319.

(3) I.L.R., 7 Mad., 423.

(5) I.L.R., 15 Mad., 366.

(7) I.L.R., 10 Bom., 461, 465.

(2) I.L.R., 6 Mad., 110.

(4) I.L.R., 8 Mad., 478.

(6) I.L.R., 17 Mad., 96, 97.

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left in this position that he can neither proceed upon the decree nor institute another suit, he is after all in no worse position than a mortgagor in England whose suit for redemption has been dismissed for other reasons than want of prosecution. If he is in possession, his rights are fully protected under the provisions of the Act. If the possession is with the mortgagee, the mortgagor has only himself to blame if he has not been careful to conform to the terms of the decree for which he himself asked. Where the decree has been made in a foreclosure suit as in *Poresh Nath Mojumdar v. Ramjodu Mojumdar*(1) it must be admitted that there may be more hardship. On that case, however, it is not necessary to give an opinion. For the reasons stated I think that the question whether the mortgagor is, after the day fixed in the decree for redemption, precluded from taking action under his decree, must be answered in the affirmative.

[This second appeal having come on for final disposal, the Court delivered judgment dismissing it with costs.]

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## APPELLATE CIVIL.

*Before Mr. Justice Best and Mr. Justice Subramania Ayyar.*

1895.  
March 28.

AMBALAVANA PANDARAM (PLAINTIFF), APPELLANT.

v.

VAGURAN AND OTHERS (DEFENDANTS), RESPONDENTS.\*

*Limitation Act—Act XF of 1877, sched. II, art. 116—Suit for rent—  
Registered contract signed by lessee only.*

In a suit for rent accrued due more than three years before the date of the plaint, it appeared that the contract between the landlord and tenant was comprised in a registered document which was signed only by the latter :

*Held*, that the suit was not barred by limitation.

SECOND APPEAL against the decree of C. Gopalan Nayar, Subordinate Judge of Madura (East), in appeal suit No. 339 of 1893, reversing the decree of H. Krishna Rau, District Munsif of Madura, in original suit No. 164 of 1892.

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(1) I.L.R., 16 Cal., 246.

\* Second Appeal No. 1337 of 1894.