

“Rs. 300); and yet the plaintiff offers to pay one-half of the mortgage debt, which I consider to be a very fair offer, and it is not shown how it is otherwise.”

Defendant No. 1 preferred this appeal.

Ganapati Ayyar for appellant.

Ramanujachariar for respondent No. 1.

JUDGMENT.—The Judge is in error in supposing that the plaintiff having purchased a portion of the mortgaged property is at liberty to redeem that portion only without redeeming the rest. This is clear on principle, and is expressly enacted in the last clause of section 60 of the Transfer of Property Act (see also *Thimappa v. Lakshamma*(1)). Section 82 of the Transfer of Property Act on which the Judge relies does not permit the redemption of a mortgage piecemeal. It merely provides for contribution towards the mortgage debt rateably by each of several properties when they are owned by different mortgagors, or when, being all the property of one mortgagor, there are prior incumbrances on some of the properties (see also *Roghu Nath Pershad v. Harlat Sadhu*(2)).

We must therefore reverse the decree of the Lower Court and dismiss plaintiff's suit with costs throughout.

KUPPUSAMI
CHETTI
v.
GAPATHI
AMMAL.

APPELLATE CIVIL.

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

MAIDEN (DEFENDANT NO. 3), APPELLANT,

v.

JANAKIRAMAYYA AND OTHERS (PLAINTIFF AND DEFENDANTS
Nos. 1 AND 2), RESPONDENTS.*

Court Fees Act—Act VII of 1870, ss. 7, 11—Mesne profits left to be determined in execution of decree—Valuation of appeal against decree.

In a suit for land with mesne profits a decree was passed for the plaintiff in which the amount of mesne profits was left to be determined in execution, the date from which they should be computed being the date of the suit. The defendant appealed against the decree on the ground that he should not have been decreed to pay either mesne profits or costs. In the valuation of the appeal

1898.
February 3.

(1) I.L.R., 5 Mad., 385.

(2) I.L.R., 18 Cal., 320.

* Appeal No. 109 of 1897.

MAIDEN
v.
JANAKIRAMA
MAYYA.

for the purposes of the Court Fees Act, nothing was included on account of the mesne profits :

Held, that no stamp duty was payable in respect of the mesne profits subsequent to the institution of the suit.

APPEAL against the decree of T. Ramachandra Rau, Subordinate Judge of Kistna, in Original Suit No. 4 of 1896.

This was a suit for land in which the plaintiff also asks for a decree for mesne profits for the years 1892-93 to 1894-95 and subsequent mesne profits up to the date of the delivery of possession to him. The Subordinate Judge passed a decree that the third defendant deliver possession to the plaintiff of the lands in question and pay mesne profits from the year 1895-96 until delivery of possession, the amount thereof to be determined in execution. He dismissed the rest of the plaintiff's claim for mesne profits, but decreed that the third defendant should pay to the plaintiff Rs. 779-10-0 as costs of the suit.

Defendant No. 3 preferred this appeal on the ground that he should not have been made liable for either mesne profits or costs, and, in the computation of the value of the appeal for the purpose of assessing the Court-fee, he did not include any sum on account of the mesne profits left undetermined.

Etiraja Mudaliar for appellant.

Pattabhirama Ayyar and *Venkatarama Sarma* for respondent No. 1.

Sriramulu Sastri for respondent No. 2.

Sivasami Ayyar for respondent No. 3.

JUDGMENT.—Having regard to *Ramakrishna Bhikaji v. Bhimabai* (1) we must hold that no stamp duty was payable in respect of the mesne profits, subsequent to the institution of the suit, viz., for fasli 1305, which profits are comprised in the appeal.

The only contention urged with reference to the merits is that the Subordinate Judge's conclusion that the plaintiff's vendor had consented to the arrangement under which the third defendant held possession is against the weight of evidence. The sole evidence in support of the contention is that of the third defendant himself. We think the Subordinate Judge was right in declining to accept that evidence for the reasons given by him. We see no reason to interfere with the order made as to costs.

The appeal is dismissed with costs.