

APPELLATE CIVIL.

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

KUPPUSAMI CHETTI (DEFENDANT No. 1), APPELLANT,

v.

PAPATHI AMMAL AND ANOTHER (PLAINTIFF AND DEFENDANT
No. 2). RESPONDENTS.*

1897.
November 29.

*Transfer of Property Act—Act IV of 1882, ss. 60, 82—Partial redemption—
Contribution.*

A mortgaged two houses to B for Rs. 200. C purchased at a Court-sale A's interest in one of the houses and sold it to the plaintiff. The plaintiff sued to redeem the house and prayed that the mortgagee be ordered to convey it to her on payment of Rs. 100 :

Held, that the suit should be dismissed.

APPEAL against the decree of P. Srinivasa Rao, Judge of the Madras City Civil Court, in Original Suit No. 159 of 1895.

This was a redemption suit and the facts were as follow :—

In 1873 one Ramakistna Naik, since deceased, and defendant No. 2 mortgaged two houses to one Bava Kistnappa Chetti, since deceased, and defendant No. 1, to secure the sum of Rs. 200 together with interest; and in 1874 one Tiruvengadasami Naik obtained a decree against the mortgagors in execution of which he attached and brought to sale and with leave of the Court purchased one of the houses subject to the mortgage, and in 1895 Tiruvengadasami Naik conveyed his interest therein to the plaintiff. The plaint contained, *inter alia*, the following allegations:—“ By apportioning the principal sum of Rs. 200 between the two items of the mortgaged property, there is now due in respect of house premises No. 31 aforesaid by the mortgagor to the mortgagee Rs. 100, which sum the plaintiff is ready and willing to pay to the defendant, of which the defendant before filing this plaint had notice.”

The prayer of the plaint was as follows :—

“ That she may redeem the plaint premises, being one of the items of the mortgage referred to in the plaint.

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“That the defendant may be ordered to reconvey the said premises to her upon payment of the said sum of Rs. 100 with such costs as the Court may order to be named by the Court.”

The chief issues settled were the first and the third which were as follow :—

“1. Whether the plaintiff's vendor had a right to redeem the plaint property ?”

“3. If, under any circumstances, the plaintiff is entitled to redeem the property, what is the sum of money which he should pay for the redemption ?”

As to these issues the Judge said—

“As to the first issue—it is quite clear that plaintiff's vendor Tiruvengadasami Naik had a perfect right to redeem the property, for he purchased the same when sold in execution of the decree passed in Original Suit No. 794 of 1873 by the High Court against the owners of the property, viz., the second defendant and deceased Ramakistna Naik; and the sale was duly confirmed (exhibits B, C and D). And hence it follows that the plaintiff, who purchased the property from the said Tiruvengadasami Naik, is entitled to redeem the property on his own account. I find the first issue in plaintiff's favour.”

“As to the third issue—this is the most practical issue; in fact this is the only real issue to be determined in the suit,—namely, what is the sum of money which the plaintiff has to pay to first defendant for redeeming the plaint house No. 31 ?”

“First as to the principal amount of the mortgage debt. Admittedly the debt was Rs. 200; and for this, two houses were mortgaged, viz., the plaint house No. 31 and another house No. 39. The first defendant requires that the plaintiff should pay him the whole of this amount of Rs. 200, while the plaintiff states that, as he has purchased only one of the two houses mortgaged to first defendant's father, he is liable to contribute only one-half to the secured debt; and that this one-half is Rs. 100. This contention of the plaintiff is quite lawful, having the sanction of section 82 of the Transfer of Property Act. From the evidence of the witness examined, it appears that out of the two houses by which the first defendant's debt is secured, the house No. 39, which is not now in dispute, is more valuable (worth between Rs. 400 and Rs. 500) than the house No. 31 which the plaintiff now seeks to redeem (worth between Rs. 250 and

“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.

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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.