

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim and Mr. Justice Spencer.

1915.
October 19.

GAJJALA YELLA REDDI AND ANOTHER (DEFENDANTS NOS. 1
AND 2), APPELLANTS,

v.

SYED MUHAMADALLI *alias* DADA PEERU AND ELEVEN
OTHERS (PETITIONERS—PLAINTIFFS NOS. 1, 3 AND 4 AND
DEFENDANTS NOS. 4 TO 8 AND THE THIRD
DEFENDANT'S LEGAL REPRESENTATIVES), RESPONDENTS.*

Civil Procedure Code (Act XIV of 1882), sec. 258—Civil Procedure Code (Act V of 1908), O. XXI, r. 2—Mortgagee (decree-holder) left in possession under decree—Liability under decree to account and to credit surplus income annually—Receipt by mortgagee, not certified to Court, effect of—Receipt, if payment under or adjustment of decree—Certificate within ninety days, if necessary.

Where under the terms of a decree, the decree-holders (mortgagees) were to be in possession of the mortgaged property for six years, to render accounts every year and to give credit for any surplus income accruing from the lands, and at the end of eight years the judgment-debtor applied for the taking of accounts and delivery of possession of the lands),

Held, that the receipts by the decree-holders of the income from the lands were not payments under or adjustments of the decree, under section 258 of the Civil Procedure Code (Act XIV of 1882), corresponding to Order XXI, rule 2 of the new Code, and did not require to be certified to the Court within ninety days from the dates when the incomes were received by the decree-holders.

Vaidhinadasamy Ayyar v. Somasundaram Pillai (1905) LL.R., 28 Mad., 473 at p. 478 (F.B.), followed.

Ramasami Naik v. Ramasami Chetti (1907) LL.R., 30 Mad., 255 at p. 265 and *Nistarini Dasi v. Kazim Alini* (1910) 12 C.L.J., 65, distinguished.

APPEAL against the Order of Diwan Bahadur V. SUBRAHMANYAM PANTULU, the District Judge of Cuddapah, in Original Petition No. 184 of 1911 in Original Suit No. 6 of 1902.

The material facts appear from the judgment.

S. Gopalaswami Ayyangar for the appellants.

C. V. Anantakrishna Ayyar and *P. C. Desikachariar* for the respondents.

The following judgment of the Court was delivered by

ABDUR
RAHIM AND
SPENCER, JJ.

ABDUR RAHIM, J.—This is an appeal by the decree-holders, who

* Civil Miscellaneous Appeal No. 109 of 1914.

were the mortgagees of the property against the order of the Sub-ordinate Judge, dated 30th September 1913, made on an application of the judgment debtors asking that an account be taken of the receipts and disbursements in respect of the income of the property, that the amount so settled be entered in satisfaction of the decree, and that the balance due by the decree-holders who were in possession of the property be paid to the petitioners, that is, the judgment-debtors and also that a direction be made for delivery of the property to them.

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A Commissioner was appointed to go into the accounts and to report to the District Judge as to the receipts and expenditure. Upon receipt of the report, the District Judge went into the matter and arrived at the finding that a sum of Rs. 14,000 and odd should be credited against the amount of the decree.

The first objection raised before us was that no credit should have been allowed for the amount received by the decree-holders because such receipts were not certified to the Court within ninety days after they were received. The decree-holders remained in possession of the property under the terms of the decree and the decree provided that every year they should render account and give credit for any surplus that might be in their hands after meeting the necessary expenses. They remained in possession for more than eight years though the decree expressly provided for their remaining in possession only for six years. The question of limitation is whether such receipts by mortgagee decree-holders in possession of the property is "money payable under a decree paid out of Court or adjustment in whole or in part to the satisfaction of the decree-holder." Money so received cannot in any sense be said to be money payable under the decree within the meaning of this rule nor can it be said to be an adjustment between the decree-holder and judgment-debtor. There was in fact no adjustment. The simple fact is that the mortgagee decree-holders being in possession are to account for the money received by them, and if any money is still payable to them, they will be entitled to its payment. On the other hand if their decree had been satisfied, the judgment-debtors are entitled to delivery of possession of the property and also to any balance of the money that may remain in their hands. We think this point is covered by a dictum in a Full Bench decision of this Court.

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Vaidhinadasamy Ayyar v. Somasundram Pillai(1). The observation which applies to the case is to be found at page 478 where it is laid down that the special provision for the purpose of limitation would not make the sums received by a usufructuary mortgagee decree-holder in possession, money payable under a decree within the meaning of section 258 of the old Code corresponding to rule 2, Order XXI. Our attention has also been drawn to *Ramasami Naik v. Ramasami Chetti*(2). That was not a case in which the decree-holder was in possession of the property under the terms of the decree and the moneys sought to be credited by the judgment-debtor were not the income from the property received by the decree-holder in possession of it; but it appears that at page 265, a reference is made to the decision in *Vaidhinadasamy Ayyar v. Somasundram Pillai*(1) and there it is stated that according to that decision, the amount realized by a usufructuary mortgagee remaining in possession after a decree for sale cannot be applied in satisfaction of the decree amount unless certified under section 258 of the old Civil Procedure Code. It seems to us that this proceeds upon a misapprehension of what is laid down in *Vaidhinadasamy Ayyar v. Somasundram Pillai*(1) to which we have already referred. We have also been referred to *Nistarini Dasi v. Kazim Alini*(3) where it is laid down that in a suit by the decree-holder for an order absolute for sale, the judgment-debtor is entitled to have an account taken of the receipts by the decree-holder. That decision does not apply to the facts of this case. We are of opinion that the plea of limitation is not sustainable.

[The remaining portion of the judgment deals with questions of fact, and has therefore been omitted from this report.]

K.R.

(1) (1905) I.L.R., 23 Mad., 473 at p. 478 (F.B.).

(2) (1907) I.L.R., 30 Mad., 255 at p. 265. (3) (1910) 12 C.L.J., 65.