

1878

JAKIMI
CHAND
v.
TORI LAL.

keep out interlopers, and considering that the parties are own brothers there is nothing abnormal in such an agreement.”

The plaintiff appealed to the High Court, contending that the agreement was not binding, there being no consideration for it, and that it had been made in fraud of the plaintiff.

Munshis *Hanuman Prasad* and *Rajn Prasad*, for the appellant.

Pandit *Bishambhar Nath* and *Babu Oprokash Chandar*, for the respondents.

The judgment of the Court was delivered by

TURNER, J.—In our judgment the agreement is binding. It is registered, and the settlor thereby agrees that, in consideration of the recognition by the brothers of his rights in the property to which the deed relates, he will not sell, transfer, or hypothecate his share, and that should he desire to dispose of it he would convey it to them for Rs. 800. There is no reason why such an agreement should not be enforced. If it was made out of natural affection it has been expressed in writing and duly registered. If the consideration was, as it purports to have been, the recognition of the settlor's right to share, there was a consideration. There is nothing to show that the agreement was made in fraud of the appellant. The appeal fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Spankie.

KALIAN DAS AND OTHERS (PLAINTIFFS) v. NAWAL SINGH AND OTHERS
(DEFENDANTS).*

Return of Plaintiff—Appeal—Act VIII of 1859 (Civil Procedure Code)—Act X of 1877 (Civil Procedure Code), s. 584—Suit for Redemption of Usufructuary Mortgage—Jurisdiction.

A suit to redeem a usufructuary mortgage of certain lands was instituted in the Munsif's Court. After the suit had been admitted and the parties called on to

* Second Appeal, No. 1424 of 1877, from a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 18th September, 1877, affirming a decree of Munshi Gangai Saran, Munsif of Khair, dated the 26th June, 1877.

1878
March 7.

produce evidence, the Munsif ordered the plaint in the suit to be returned to the plaintiff for presentation in the proper Court, on the ground that the suit should have been instituted in the Court of the Subordinate Judge, the value of the property in suit being beyond the jurisdiction of a Munsif. *Held* that, under Act VIII of 1859, the Munsif's order was appealable to the lower appellate Court, and, under Act X of 1877, the lower appellate Court's order to the High Court.

Where the question in dispute in such a suit is not only whether the property has been redeemed out of the usufruct, but whether the property and the right to redeem belongs to the plaintiff, and the value of the property exceeds Rs. 1,000 such suit is not cognizable by a Munsif.

THIS was a suit for "complete" possession of certain land by redemption of a usufructuary mortgage and ejectment of the defendants, valued at Rs. 150, the principal money secured by the mortgage. The suit was instituted in the Munsif's Court on the 17th April, 1877. On its institution the Munsif made an order on the plaint fixing the 8th May, 1877, for the hearing of the suit, and directing that the defendants should be summoned to appear on that day in person or by pleader, and that the pleaders for the plaintiffs should be ready to produce their evidence. The defendants appearing denied the mortgage and set up a proprietary title to the land. On the 26th June, 1877, the Munsif ordered the plaint in the suit to be returned to the plaintiffs for presentation in the proper Court, holding that, having looked to the nature of the defence, the suit must be regarded as one to recover possession of immoveable property, and that, therefore, as the value of the land exceeded Rs. 1,000, the suit was not cognizable by a Munsif. On appeal by the plaintiffs, the Subordinate Judge affirmed the decision of the Munsif.

The plaintiffs appealed to the High Court, contending that the suit was one to redeem mortgaged property, to be valued according to the principal money secured by the mortgage, and not one for the possession of land, to be valued under cl. v, (b), s. 7 of Act VII of 1870, and the mere assertion by the defendants of an adverse title could not alter the nature of the suit; and that the Subordinate Judge had no jurisdiction to hear an appeal from the Munsif's order, but should have directed the plaintiffs to institute the suit in his own Court.

Mir Akbar Husain, for the appellants.

Munshi Hanuman Prasad, for the respondents.

1878

 KALJAN DAS
 v.
 NAWAL
 SINGH.

1878

The judgment of the Court was delivered by

KALIAN DAS
v.
NAWAL
SINGH.

PEARSON, J.—A doubt was expressed at the hearing as to the admissibility of this appeal. We do not share that doubt. A case of exactly the same nature was entertained and disposed of on the 18th January last (1). The Munsif's order for the return of the plaint was passed after the suit had been admitted on the file and the parties had been called on to produce evidence. His order finally disposed of the suit, and was the legitimate subject of a regular appeal under Act VIII of 1859. The present appeal from the appellate decree of the lower appellate Court has presumably been brought and admitted under s. 584 of Act X of 1877.

The lower appellate Court's decision is, in our opinion, right. The question is not one of institution-fee but of jurisdiction : and it appears that the subject-matter of dispute in this case is not only whether the property has been redeemed by payment of the debt out of the usufruct, but whether the property and the right to redeem belongs to the plaintiffs. As the value of the property is found to exceed Rs. 1,000, it has been rightly held that the suit was not cognizable by the Munsif. The plaint was returned to the plaintiffs for presentation in the proper Court. Instead of presenting it there, they elected to appeal from the Munsif's order and the lower appellate Court has properly disposed of their appeal. We dismiss this appeal with costs.

Appeal dismissed.

1878
March 8.

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Turner.

SHIB LAL AND OTHERS (PLAINTIFFS) v. HIRA LAL AND ANOTHER (DEFENDANTS).*

Cancellation of Document—Suit for a Declaration that a Document is not Genuine—Reasonable Apprehension of Injury.

Where a void or voidable document cannot legally be used for the purpose which is apprehended, there is no such reasonable apprehension that such

* Second Appeal, No. 12 of 1878, from a decree of C. J. Daniell, Esq., Judge of Mainpuri, dated the 19th September, 1877, reversing a decree of Maulvi Muhammad Hamid Hasan Khan, Subordinate Judge of Mainpuri, dated the 20th July, 1876.

(1) In the case referred to the question of the admissibility of a first or second appeal was not raised. Turner and Spankie, JJ., held in it that, as the mortgaged property was the mat-
ter in dispute and the value of the ownership was in excess of the pecuniary limits of the Munsif's jurisdiction, the Munsif could not entertain the suit.