

holding that the appellant was entitled to redeem, and the High Court reversing that decision and dismissing the suit. It does not appear to their Lordships to be necessary to consider the construction of the deed. In the part of India where the Regulation is in force, the right to redeem depends entirely upon it. The words of s. 7 are, that where the mortgagee has not been put in possession of the mortgaged property (which was the case in this mortgage), the payment or established tender of the principal sum lent, with any interest due thereupon, shall entitle the mortgagor to the redemption of his property before the mortgage is finally foreclosed in the manner provided by the 8th section. That section gives the mortgagor one year from the date of the notification to redeem the property, and says that if he does not do so in the manner provided by the 7th section, the mortgage will be finally foreclosed and the conditional sale will become conclusive. It could not be denied by the appellant's counsel that much more than one year's interest was due. Indeed, the arrear of interest had continued to increase from the 23rd April, 1875, till the date of the deposit. The mortgagor had clearly not done what was necessary by the terms of the Regulation to entitle him to the redemption, and for that reason their Lordships will humbly advise Her Majesty to affirm the decree of the High Court and to dismiss the appeal. The appellant will pay the costs of it.

1886

MANSUR ALI
KHAN
v.
SARFU
PRASAD.

Appeal dismissed.

Solicitors for appellant : Messrs. T. L. Wilson and Co.

Solicitors for respondent : Messrs. Oehme and Summerhays.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Tyrrell.

CHUNNI LAL (DEFENDANT) v. BANASPAT SINGH (PLAINTIFF)*

1886
August 2.

Lease—Mortgage for securing payment of rent—Decree by Revenue Court for arrears of rent—Decree time-barred—Effect of decree on mortgage—Suit for sale of mortgaged property—Civil Procedure Code, s. 43.

In 1874, the plaintiff leased certain immoveable property to the defendant, and the latter executed a deed by which he covenanted to pay the annual rent and

* Second Appeal No. 1156 of 1885, from a decree of F. E. Elliot, Esq., District Judge of Allahabad, dated the 1st June, 1885, reversing a decree of Abdu Ram Kali Chaudhri, Subordinate Judge of Allahabad, dated the 23rd January, 1884.

1886

CHUNNI LAL
v.
BANASPAT
SINGH.

fulfil other conditions of the lease, and gave security in Rs. 3,000 by mortgage of landed property. In 1874, the plaintiff obtained decrees in the Revenue Court for arrears of rent, and the decrees were partially satisfied, and then became barred by limitation. In 1884, the plaintiff brought a suit to recover the balance due by enforcement of the mortgage security against the purchasers of the mortgaged property.

Held that the plaintiff had two separate rights of action, one on the contract to pay rent, and the other on the mortgage security; that he could only enforce the first by a suit in the Revenue Court for arrears of rent, and the second by suit in the Civil Court; and consequently there could be no bar to the latter suit by reason of the suit instituted in the Revenue Court, with reference to s. 43 of the Civil Procedure Code.

Held also that when the plaintiff obtained his decrees for rent the mortgage security did not merge in the judgment-debts, nor did he lose his remedy on it; that the two rights were distinct, and the right of action on the mortgage security was not lost because the execution of the decrees for rent was time-barred, the only effect of which was that the debt was not recoverable in execution, but the debt existed nevertheless so far as to enable the amount secured by mortgage to be recovered by suit in the Civil Court, so long as such suits were not barred by limitation. *Enam Montaz-ood-deen Mahomed v. Rijoomar Dass* (1) referred to.

Held also that the amount which the plaintiff could recover by enforcement of the mortgage-security was limited to Rs. 3,000.

THE facts of this case are stated in the judgment of the Court.

Mr. W. M. Colvin and Lala Juala Prasad, for the appellant.

Mr. J. E. Howard, Mr. C. Ross Alston, and Munshi Ram Prasad, for the respondent.

OLDFIELD and TYRRELL, JJ.—The plaintiff leased three villages to the defendant, Ram Pathak, for two years, 1279 and 1280 fasli, at a rent of Rs. 3,000 a year, and the latter executed a deed, dated the 26th August, 1871, by which he covenanted to pay the annual rent and fulfil other conditions of the lease, and gave security in Rs. 3,000 by mortgage of landed property. He fell into arrears, and the plaintiff instituted suits in the Rent Court, and in 1874, obtained three decrees for arrears of rent. He took out execution of these decrees, and payment was arranged to be made by instalments, and the decrees were partially satisfied, and thus further execution is now barred by limitation. The plaintiff has now brought the present suit to recover the balance due by enforcement of the mortgage security under the deed dated the

(1) 15 B. L. R., 408.

26th August, 1871, against Ram Pathak and Chunni Lal, who, on the 22nd August, 1878, purchased the mortgaged property.

We are only in this appeal concerned with the claim so far as it refers to Chunni Lal. He pleaded that the suit was barred under the provisions of s. 43; that since the rent decrees had become time-barred, the claim could not be maintained; and he also pleaded fraud and collusion between the plaintiff and Ram Pathak. The Court of first instance did not consider s. 43 was a bar, but that the decrees for rent being time-barred, a suit to enforce the mortgage security could not be maintained. The Judge, in appeal, admits that the rent decrees are time-barred, but considers that this affords no ground for not enforcing the claim on the mortgage security, and he overruled the plea of fraud and collusion and decreed the claim in full. The defendant Chunni Lal has appealed.

In our opinion the decree should be affirmed, and the several pleas on the part of appellant are invalid.

Under the deed dated the 26th August, 1871, Ram Pathak gave collateral security to the amount of Rs. 3,000 by a mortgage on certain immoveable property of his for the payment of the rent. The plaintiff had two separate rights of action—one on the contract to pay rent, the other on the mortgage security. He could only enforce the first by a suit in the Revenue Court to recover arrears of rent; the other he could only enforce by suit in the Civil Court. Consequently there can be no bar to the latter suit by reason of the suit instituted in the Revenue Court, with reference to the provisions of s. 43 of the Civil Procedure Code. Further, it is not the case, as was contended by appellant's counsel, that when the plaintiff obtained decrees for rent, the mortgage security merged in the judgment-debts, and he lost his remedy on it. The rights are distinct. The plaintiff's right of suit to enforce the mortgage arises by reason of there being an existing debt for rent, and remains till it is satisfied, or so long as he can institute a suit to enforce the mortgage. The mere taking of a money-decree does not extinguish the creditor's lien—*Emam Momtazooddeen Mahomed v. Rajcoomar Dass* (1). Nor is the further contention valid

(1) 15 B. L. R. 403.

1886

HUNTI LAL
v.
BANASPAT
SINGH.

that the right of action on the mortgage security is lost because the execution of the decrees for rent of the Revenue Court is time-barred. The right which the plaintiff has to recover the sum of Rs. 3,000, secured by mortgage, is distinct from the right to recover arrears of rent. The last is based on a contract to pay rent, arrears of which are recoverable exclusively in the Revenue Court; the former on a contract securing a certain sum to plaintiff by a mortgage of property in the event of rent becoming due.

The recovery of the arrears of rent may be time-barred as a judgment-debt, but the debt is not necessarily extinguished. The only effect of the decrees being time-barred is that the rent is not recoverable in execution, but the debt exists nevertheless, so far as to enable the amount secured by mortgage to be recovered by suit in the Civil Court. The right to recover on the mortgage security can be enforced in the Civil Court so long as a suit for its enforcement in the Civil Court is not time-barred under the Limitation Act.

The amount which the plaintiff can recover is limited to Rs. 3,000, and that sum is decreed against the appellant by enforcement of the mortgage. The decree of the lower appellate Court is modified accordingly. The respondent will have his costs in all Courts in proportion against the appellant.

Decree modified.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Mahmood.

SOHAWAN AND ANOTHER (DEPENDANTS) v. BABU NAND (PLAINTIFF).*

Appeal from appellate decree—Applicability of provisions as to first appeals—Remand—Judgment of first appellate Court—Civil Procedure Code, ss. 564, 565, 574, 578, 584, 587.

The judgment of a lower appellate Court, after setting forth the claim, the defence, the nature of the decree of the first Court, and the effect of the pleas in appeal, concluded, with general observations, as follows:—"The point to be determined on appeal is whether or not the decision is consistent with the merits of the case. This Court, having considered the evidence on the record and the judgment of the Munsif, which is explicit enough, concurs with the lower Court.....The finding arrived at by the Munsif, that the plaintiff's claim is established, is correct and consistent with the evidence. The pleas urged in appeal are therefore undeserving of consideration."

* Second Appeal No. 1 of 1886, from a decree of Pandit Rattan Lal, Additional Subordinate Judge of Ghazipur, dated the 11th September, 1885, confirming a decree of Munshi Kalwant Prasad, Munsif of Ballia, dated the 17th June, 1885.

1886
August 6.