

## APPELLATE CIVIL.

Before Mr. Justice Richards.

KASHI (PLAINTIFF) v. BAJRANG PRASAD (DEFENDANT). -

Act No. IV of 1882 (Transfer of Property Act), sections 92 and 94—Mortgage—Redemption—Subsequent suit for profits received by mortgagee barred.

In a suit for redemption there ought to be a complete and final settlement of all accounts between the mortgagee right up to the time of actual redemption or sale, as the case may be. A mortgagor therefore who has obtained a decree for redemption and paid in what was found by the decree to be due from him cannot subsequently sue for profits realized by the mortgagee in possession, which might and ought to have been taken into account at the time of passing the decree. *Vinayak Shivrao Dighe v. Dattatraya Gopal* (1) referred to.

THE facts of this case are as follows:—In the year 1902 the plaintiff sued for redemption of certain mortgaged property. A decree was obtained on the 17th of December 1902. On appeal the amount decreed for redemption was increased, but the decree was confirmed on the 3rd of February 1903. The plaintiff paid what was due according to the decree and got possession some time in the earlier part of the year 1903. The present suit was then instituted by the plaintiff to recover certain money which he alleged was due by the defendant: he said the defendant received certain rents out of the property from August 1902 to March 1903. The Court of first instance (Munsif of Farrukhabad) decreed the plaintiff's claim in part. On appeal, however, the lower appellate Court reversed the decree of the Court of first instance and dismissed the suit altogether. The plaintiff thereupon appealed to the High Court.

Mr. *M. L. Agarwala* and *Munshi Gulzari Lal*, for the appellants.

*Pandit M. L. Sandal* and *Lala Kedar Nath*, for the respondents.

RICHARDS, J.—The facts out of which this appeal arises are shortly as follows:—In the year 1902 the plaintiff sued for redemption of certain mortgaged property. A decree was obtained on the 17th of December 1902. On appeal the amount decreed for redemption was increased, but the decree was

\* Second Appeal No. 1147 of 1905, from a decree of *Raj Nath Prasad*, Subordinate Judge of Farrukhabad, dated the 16th of August 1905, reversing a decree of *Upendra Nath Sen*, Munsif of Fatehgarh, dated the 25th of May 1905.

1907

KASHI  
vs  
BAJBANG  
PRASAD.

confirmed on the 3rd of February 1903. The plaintiff paid what was due according to the decree and got possession some time in the earlier part of the year 1903. The present suit was then instituted by the plaintiff to recover certain money which he alleged was due by the defendant: he says the defendant received certain rents out of the property from August 1902 to March 1903. During the time that these alleged profits were received by the defendant, he was undoubtedly in possession of the property as mortgagee, and it is impossible to deny that the present suit is a suit for a further settlement and adjustment of accounts between the plaintiff and the defendant occupying the positions of mortgagor and mortgagee. The plaintiff contends that what he is sued for was not covered by the previous accounts between the parties, and according to the judgment of the Court of first instance this allegation is not without foundation. It is contended, however, on behalf of the defendant, that the present suit cannot be maintained. There is no doubt that the settlement of account between the plaintiff and the defendant, (that is, the amount for which each was liable to account) was directly and substantially in issue in the previous suit. I think it absolutely clear that in a suit for redemption there ought to be a complete and final settlement of all accounts between the mortgagor and the mortgagee, right up to the time of actual redemption or sale as the case may be. Section 92 of the Transfer of Property Act provides that in a redemption suit the Court is to pass a decree ordering that an account be taken of what *will be* due to the defendant upon a date to be fixed by the Court, when clearing the amount to be due. Section 94 speaks of the final adjustment of the amount to be paid by a mortgagor in case of redemption. In the case *Vinayak Shivrao Dighe v. Dattatraya Gopal* (1). Jenkins, C.J., makes some very cogent remarks as to what ought to be the result, between parties, of accounts in mortgage suits. I entirely agree with these remarks, and in my judgment the claim of the plaintiff in the present case could and ought to have been settled in the previous litigation and that a separate suit does not now lie. I accordingly dismiss the appeal with costs.

*Appeal dismissed.*