

partition the revenue authorities allotted the plot on which the building stood to the share of the second party the plaintiffs. The plaintiffs sued for demolition of the building and for recovery of possession of what they deemed to be their share of the land covered by the defendants' building. It was held that the suit for demolition was bad, but that it was still open to the plaintiffs to ask the Revenue authorities to assess ground rent on the premises occupied by the defendants. Neither of these two cases is on all fours with the present case. The suit as it stands, though in name a suit for partition of the building, is in reality a suit also for partition of the land on which that building stands. It is a matter which arises on partition and which should be dealt with by the Revenue Courts. In our opinion section 233, clause (k), forbids the Civil Court exercising jurisdiction over a suit of the form in which this one has been brought. We decree the appeal, set aside the decree of the court below, and restore that of the court of first instance with costs.

Appeal decreed.

1909

NARAIN
DASS
v.
BRUP
NARAIN,

Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Banerji.
MUSAMMAT DHUMAN (DEFENDANT) v. SYED ABDULLAH KHAN,
(PLAINTIFF).*

1909
March 12.

Torts—Malicious prosecution—Amount of damages—Second appeal.

In a suit for damages for malicious prosecution the question of the amount of damages is a question of fact and it is not open to the High Court to interfere in second appeal upon such a question. *Bans Madhab Chatterjee v. Bholu Nath Banerjee* (1), and *Jageswar Sarma v. Dina Ram Surma* (2) referred to.

THE facts of this case are as follows:—

Musammat Dhuman, the appellant, filed a criminal complaint against the respondent Nawab Abdulla Khan charging him with stealing the ornaments which had been on the person of a girl named Shirin Jan and which it was alleged belonged to the appellant. She also complained that Nawab Abdullah Khan had wrongfully confined that girl and a maid-servant. The complaint was dismissed by the criminal court. Nawab

*Second Appeal No. 236 of 1908 from a decree of H. E. Holme, District Judge of Jhansi, dated the 23rd December 1907, confirming a decree of Pramatha Nath Banerji, Subordinate Judge of Jhansi, dated the 21st August 1907.

1909

MUSAMMAT
DHUMAN
v.
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ABDULLAH
KHAN.

Abdullah Khan thereupon brought the suit, which gave rise to this appeal, for damages for malicious prosecution. Both the lower courts found that the complaint filed by Musammat Dhuman was false to her knowledge and malicious and awarded Rs. 700 as damages.

Babu *Sital Prasad Ghosh*, for the appellant, contended that the amount of damages awarded was excessive.

Dr. *Satish Chandra Banerji*, (for whom Babu *Jagbandhu Phani*) for the respondent submitted that the question as to the amount of damages was one of fact and could not be raised in second appeal. *Banee Madhub v. Bhola Nath* (1). *Jogeswar Sarma v. Dinaram Sarma* (2). *Joharuddin v. Dabee Pershad* (3).

STANLEY, C. J. and BANERJI, J.—This appeal arises out of a suit for damages for malicious prosecution. It appears that the appellant filed a complaint against the respondent charging him with having stolen the ornaments which were on the person of a girl named Shirin Jan who eloped with the son of the respondent. She also complained that the plaintiff had wrongfully confined that girl and a maid-servant and she applied for the search of the plaintiff's house which was accordingly searched. The complaint was found by the criminal court to be unfounded and was dismissed. In this case the plaintiff sought to recover Rs. 500 as damages for loss of reputation and Rs. 499 as damages for mental and physical suffering. The Court of first instance made a decree in the plaintiff's favour for Rs. 700 and this decree has been affirmed by the lower appellate court. Both the courts have found that the complaint made by the appellant, which in her defence to the present suit she asserted to be true, was false and malicious and without reasonable and probable cause. That finding is based upon legal evidence and we are not satisfied that it is erroneous. The only question which remains therefore is that of damages. If we had to decide that question ourselves, we should certainly hold that the amount awarded was excessive, but it has been held by the Calcutta High Court in *Banee Madhub Chatterjee*

(1) (1868) 10 W. R. 164. (2) (1893) 3 C. L. J., 340.
(3) (1870) 13 W. R., 22.

v. *Bhola Nath Banerjee* (1) and *Jageswar Sarma v. Dinaram Sarma* (2) that the question of the amount of damages is a question of fact and it is not open to the High Court to interfere in second appeal upon such a question. We are not prepared to dissent from the view held in those cases, and accordingly dismiss the appeal with costs.

1909

MUSAMMAT
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Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Banerji.

HAMIDA BIBI AND ANOTHER (PLAINTIFFS) v. AHMAD HUSAIN

(DEFENDANT).*

1909

March 12.

Act No. IV of 1882 (Transfer of Property Act), section 60—Inheritance of mortgagee's rights by mortgagee—Integrity of the mortgage broken up.

Where the equity of redemption in respect of a part of the mortgaged property becomes vested in the mortgagee whether by purchase or by inheritance or otherwise there is a merger of rights and the integrity of the mortgage is broken up.

H mortgaged certain property to *B* who transferred his mortgagee right to *M. M* died leaving *A* as his sole heir. *H* died leaving 51 heirs one of whom was *A*. Some heirs of *H* brought this suit for redemption of their shares only. *Held* that the plaintiffs were entitled to redeem their shares inasmuch as the mortgagee having inherited part of the property mortgaged the integrity of the mortgage was broken up. *Lachmi Narain v. Muhammad Yusuf* (3) distinguished. *Sobha Sah v. Inderjeet* (4), followed. *Azimat Ali Khan v. Jowahir Singh* (5), *Kallan Khan v. Mardan Khan* (6), *Munshi v. Daulat* (7) referred to.

THIS was a suit for redemption of a usufructuary mortgage executed by one Hafiz in the year 1858 in favour of one Babu Lal. Babu Lal transferred his mortgagee rights to one Ahmad Kareem in 1875. The plaintiff is one of the fifty-one surviving heirs of the original mortgagor. The defendant Ahmad Husain is also one of the heirs of the mortgagor but he has also succeeded by right of inheritance to the mortgagee rights of Ahmad Kareem as his sole heir. The plaintiff brought this suit for redemption of her share in the mortgaged property on payment of a proportionate amount of the mortgage money. The defence was that the plaintiff could not redeem her own share only in the mortgaged property. Both the courts below

* Appeal No. 8J of 1908 under section 10 of the Letters Patent.

(1) (1868) 10 W.R., 164.

(4) (1873) 5 N. W. P., 148.

(2) (1898) 3 C. L.J., 340.

(5) (1870) 13 M. I. A., 404.

(3) (1894) I. L. R., 17 All., 68.

(6) (1905) I. L. R., 28 All., 155.

(7) (1906) I. L. R., 29 All., 262.