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arrive at any such conclusion and such a view is undoubtedly opposed to what has been the *cursus curiæ* of this Court. Where a Magistrate has not laid proper foundation for his proceedings this Court has sent for the record and interfered. As instances I may refer to *Pitambar Lal v. Sarda Prasad* (1) *Mahadeo Kunwar v. Bisu* (2), *In re T. A. Martin* (3), *In re Dyawappa Basgun da Patil* (4) and *Jhengar v. Baijnath* (5).

The result is that I hold that this Court is precluded from interfering in the present case. The proceedings were proceedings of a Magistrate of the first class and were very carefully taken under Chapter XII of the Code of Criminal Procedure. He committed no irregularity, and if afterwards he erred in any way that is a matter which cannot be interfered with by this Court in revision under the law as it stands. He intended to exercise jurisdiction under Chapter XII; he did exercise jurisdiction, and he was entitled to do so. The application is dismissed.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Muhammad Raftq.

ZAIB-UN-NISSA BIBI (PLAINTIFF) v. MAHARAJA PARBHU NARAIN SINGH AND OTHERS (DEFENDANTS).*

Mortgage—Suit for redemption—Major portion of mortgaged property purchased by mortgagee—Suit by one only of the heirs of the mortgagor to redeem the whole of the remaining share in the mortgaged property.

Out of the original 16 annas of a village which was the subject of a usufructuary mortgage, the mortgagee acquired by purchase 15 annas and 4 pies. After the death of the mortgagor, one of his heirs sued to redeem the whole of the remaining 2 annas and 8 pies. The other heirs were made parties to the suit as *pro forma* defendants and consented to the plaintiff redeeming the whole of the remaining share. *Held* that, notwithstanding this, the

* Second Appeal No. 162 of 1916, from a decree of S. R. Daniels, District Judge of Allahabad, dated the 25th of August, 1915, modifying a decree of H. A. Lane, Subordinate Judge of Mirzapur, dated the 12th of May, 1914.

(1) (1912) 10 A. L. J., 465. (3) (1904) I. L. R., 27 All., 206.

(2) (1903) I. L. R., 25 All., 537. (4) (17) Bom., L. R., 362.

(5) (1913) 11 A. L. J., 586.

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plaintiff was only entitled to redeem her own personal share. *Kuray Mal v. Puran Mal* (1) and *Munshi v. Daulat* (2) followed. *Sakharam Narayan v. Gopal Lakshuman* (3) not followed.

In 1823 a usufructuary mortgage was made in favour of the predecessor in interest of the respondent, who subsequently acquired by purchase 13 annas 4 pies, out of 16 annas of the mortgaged property. The appellant, who was one of the heirs of Dalil-ullah the owner of the remaining 2 annas 8 pie share, brought a suit for redemption of the whole of that share. She impleaded Musammat Alim-un-nissa, another heir of Dalil-ullah who had not joined in the suit, as a *pro forma* defendant. The defence, *inter alia*, was that the plaintiff was not entitled to redeem more than her own share out of the 2 annas 8 pies. After the institution of the suit, Musammat Alim-un-nissa filed an application in which she expressed her willingness that the plaintiff might redeem her share also. The court of first instance decreed the whole suit. It distinguished the ruling in *Munshi v. Daulat* (2) on the ground that the present case was one of co-heirs of a single mortgagor, and not one of original co-mortgagors. On appeal the District Judge was of opinion that the distinction was not a valid distinction; especially as Dalil-ullah had been dead, and the interests of his heirs had become separated at the time when the integrity of the mortgage was broken up by the mortgagee's purchase of 13 annas 4 pies. The District Judge also held that the consent given by Musammat Alim-un-nissa would not give the plaintiff the right to redeem the whole share unless she was legally entitled to do so; and, following the case in *Munshi v. Daulat* (2), he decreed the claim to the extent of the plaintiff's share. The plaintiff appealed to the High Court.

Mr. *Jawahar Lal Nehru* and Mr. *A. H. C. Hamilton* for the appellant:—

The proposition of law that when the integrity of a mortgage is broken up, and there are more mortgagors than one, each is entitled to redeem only his proportionate share of the mortgaged property, is not disputed. But where those mortgagors

(1) (1879) I. L. R., 3 All., 565. (2) (1906) I. L. R., 29 All., 262.

(3) (1886) I. L. R., 10 Bom., 656 (Note).

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happen to be the heirs of the same original mortgagor and all of them are parties to the suit for redemption and in addition express their consent to one of themselves being allowed to redeem not only his own share but of the others also no harm will be done if the plaintiff is given a decree for redemption of the whole property. The provision is intended for the benefit of the mortgagors, and this course will relieve them from the necessity of bringing separate suits for redemption. I rely on *Sakharam Narayan v. Gopal Lakshuman* (1).

The Hon'ble Munshi *Gokul Prasad* (with him *Babu Sarat Chandra Chaudhri*), for the respondent mortgagee, was not called upon.

TUDBALL and MUHAMMAD RAFIQ, JJ. :—The facts of this case, so far as it is necessary to state them for the purposes of this appeal, are as follows:—A mortgage was made in 1823 of certain property. One of the mortgagors was Sheikh Dalil-ullah who owned a 2 anna 8 pie share out of the 16 annas mortgaged. The present plaintiff is one of the descendants of Dalil-ullah. The other descendants and heirs of Dalil-ullah are also parties to the suit, having been made *pro forma* defendants. Admittedly the integrity of the mortgage has been broken up, and the mortgagee is now owner of Re. 0-13-4 out of the 16 annas. The plaintiff sought to redeem the whole of the Re. 0-2-8 share which originally belonged to Dalil-ullah. The court of first instance gave her a decree. The lower appellate court has held on the strength of the rulings of this Court, that the plaintiff is only entitled to redeem her own share. That share has been ascertained. The plaintiff comes here in second appeal, and she pleads that she is entitled to redeem the whole of the Re. 0-2-8 share because the other heirs and descendants have expressed their willingness that she should do so. It is urged that the suit is in substance a suit by all the heirs to redeem the whole share. With this last plea we cannot agree. It would have been easy enough for the *pro forma* defendants, if they had so wished, to have turned themselves into plaintiffs and to have joined in the suit with the appellants. This they did not do. Our attention has been called to a decision of the Bombay High Court reported in *Indian Law*

(1) (1886) I. L. R., 10 Bom., 656 (Note).

Reports, 10 Bombay, page 656, which is somewhat in favour of the appellant. The appellant, however, is met at the forefront of this appeal by a series of rulings of this Court commencing from I. L. R., 2 All., 565 and ending with I. L. R., 29 All., 262. It is clear on the face of these rulings that the plaintiff is entitled only to redeem the share which she owns in the mortgaged property, and that share is much less than Be. 0-2-8. We can see no good reason to differ from a long series of decisions which have prevailed in this Court, especially when the rulings of this Court are based on a ruling of their Lordships of the Privy Council. In our opinion the decision of the court below is quite correct. We therefore dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

MALIK AKBAR ALI KHAN (PLAINTIFF) v. SHAH MUHAMMAD (DEFENDANT).*

*Act No. V of 1881 (Indian Easements Act), section 60—Licence—Denial
by licensee of licensor's title.*

Held that a licensee in possession does not, like a tenant, by denying the title of the grantor of the licence, forfeit the licence and become liable to immediate ejectment. *Dharam Kunwar v. Fakira* (1) followed.

THIS was a suit in ejectment. The plaintiff came into court alleging that the defendant was his tenant. The defendant, however, set up a licence, and it was subsequently admitted that the defendant was a licensee. The main ground alleged for the dispossession of the defendant was that he had, in a previous suit, denied the title of the plaintiff to the land in respect of which the licence was granted. In the present suit, however, the defendant admitted the title of the plaintiff. The court of first instance dismissed the suit and on appeal the lower appellate court confirmed the first court's decree. The plaintiff thereupon appealed to the High Court.

The appeal coming on for hearing before TUDBALL, J., was referred to a Division Bench by the following order :—

“The question which arises in the present case for decision is one which is covered by a decision of this Court. It clashes

* Second Appeal No. 1559 of 1915, from a decree of Parmanand, District Judge of Shahjahanpur, dated the 4th of September, 1915, confirming a decree of Radha Kishen, Munsif of Shahjahanpur, dated the 22nd of May, 1915.

(1) Weekly Notes, 1901, p. 157.

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