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examined the case cited by Munshi Sukh Ram [Second Appeal, No. 226 of 1878 (1)] and I do not find that it is at all in point. We decree the appeal and reverse the decree of the lower appellate Court, restoring that of the Munsif with costs.

Appeal allowed.

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May 26.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

BAHADUR (PLAINTIFF) v. NAWAB JAN (DEFENDANT)*

Suit for redemption of Mortgage—Valuation of suit—Jurisdiction.

The integrity of a joint usufructuary mortgage having been broken in consequence of the mortgagee having purchased the right of several of the mortgagors, one of the mortgagors sued in the Munsif's Court to recover his share of the mortgaged property, alleging that the mortgage had been redeemed. The value of the mortgagee's right, *quâ* such share, was under Rs. 1,000. The mortgagee set up as a defence to such suit that a bond, under which a sum exceeding Rs. 1,000 was due, had been tacked to the mortgage, and that until such sum had been satisfied the plaintiff could not recover possession of his share. *Held*, on the question whether the Munsif had jurisdiction, that the value of the subject-matter of the suit was the value of the mortgagee's right, *quâ* the plaintiff's share; and as the value of such right did not exceed Rs. 1,000 even if it were held that the mortgaged property was further incumbered with such bond, such suit was cognizable in the Munsif's Court. The principle laid down in *Gobind Singh v. Kallu* (2) followed.

THE plaintiff in this suit claimed possession of a one-fifth share of a certain village, which had been mortgaged on the 9th January, 1816, by its then proprietors, for Rs. 325 for a term of six years, the mortgagee obtaining possession. The suit was instituted in the Munsif's Court, being valued at Rs. 65, one-fifth of the mortgage-money. The plaintiff, who represented the mortgagors as regards the share in suit, alleged that the entire mortgage-debt had been satisfied out of the usufruct. The defendant in the suit, who derived his title from the mortgagee, set up as a defence to it, amongst other things, that the mortgagors had on the 2nd August, 1824, given the mortgagee a bond for Rs. 682, which had been tacked to the mortgage of 1816, and the principal amount and interest due on this bond, *viz.*, Rs. 4,695-10-0, must be satisfied before the plaintiff could obtain possession of the share in suit.

* Second Appeal, No. 1251 of 1880, from a decree of H. A. Harrison, Esq., Judge of Farukhabad, dated the 31st August, 1880, reversing a decree of Maulvi Wajid Ali, Munsif of Kainagarj, dated the 17th July, 1880.

(1) Unreported.

(2) I. L. R., 2 All. 778.

The Munsif decided the issue to which this defence gave rise in the plaintiff's favour, holding, amongst other things, that the bond of the 2nd August, 1824, was not proved to be a genuine and valid instrument; and it gave the plaintiff a decree for the share in suit. On appeal by the defendant the lower appellate Court held that this defence ousted the jurisdiction of the Munsif, and it was not competent for him to determine the issue arising thereout, as it involved a sum exceeding Rs. 1,000, his pecuniary jurisdiction; and it made an order returning the plaint to the plaintiff that it might be presented to the proper Court.

On second appeal by the plaintiff it was contended on his behalf that the suit was cognizable in the Munsif's Court.

Pandits *Ajudhia Nath* and *Nand Lal*, for the appellant.

Pandit *Bishambhar Nath*, for the respondent.

The judgment of the Court (STRAIGHT, J. and TYRRELL, J.,) was delivered by

STRAIGHT, J.—We think that the plea in appeal has force, and that the Judge acted erroneously in returning the plaint on the ground that the Munsif had entertained the suit without jurisdiction. The plaintiff-appellant came into Court upon the allegation that the mortgage of 1816 had been satisfied out of the usufruct, and that, as the representative by purchase of the rights of one of the mortgagors, he was entitled to possession of so much of the mortgaged property as belonged to his share. The substantial defence put forward by the defendants-respondents was that a bond for Rs. 682, dated the 2nd August, 1824, had been tacked to the mortgage of 1816, and that before the plaintiff could obtain possession of the property, the principal sum due under this instrument, together with interest, amounting in all to Rs. 4,695-10-0, must be satisfied. The Munsif framed an issue upon this point, and decided it in favour of the plaintiff. In appeal the Judge was of opinion that the contention set up by the defendants ousted the jurisdiction of the Court of first instance, and that it was not competent for him to determine such an issue, involving as it did a sum above the amount of Rs. 1,000. Assuming it to be correct, as stated by the pleader for the plaintiff-appellant, that the integrity of the mortgage had

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been broken in consequence of the mortgagees having purchased the rights of some of the mortgagors, and that a suit by one of the mortgagors for possession of his share was properly maintainable, the value of the subject-matter of the suit was the value of that portion of the mortgagee's rights which the plaintiff alleged had been redeemed. Even had it been held that the property charged by the mortgage of 1816 had been further incumbered with the bond of 1824, the amount the plaintiff could have been ordered to pay would not have exceeded the extent of the one-fifth mortgagor's share in his hands, that is to say, a less sum than Rs. 1,000. As between plaintiff and defendants the value of the subject-matter in issue was therefore within the Munsif's jurisdiction, and he rightly entertained and disposed of the suit. We may add that this point has already been made the basis of a considered judgment of this Court—*Gobind Singh v. Kallu* (1)—in which previous rulings were considered. We are therefore of opinion that the Judge should have heard the appeal to him, and as he disposed of it upon a preliminary point, we remand the case to him under s. 562 of the Civil Procedure Code for trial on the merits.

Cause remanded.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

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MAKUND AND OTHERS (DEFENDANTS) v. BAHORI LAL (PLAINTIFF).*

Right to begin—Burden of proof—Irregularity not affecting merits—Powers of appellate Court—Act X of 1877 (Civil Procedure Code), s. 578.

The defendants in a suit on a bond admitted the execution of the bond, but denied that they had received, as the bond recited they had at the time of its execution, the consideration for it. The Court of first instance instead of calling on the defendants to establish the fact that they had not received the consideration for the bond, as it ought to have done under the circumstances, irregularly allowed the plaintiff to produce witnesses to prove that the consideration for the bond had been paid at the time of its execution. The evidence of these witnesses proved that the consideration of the bond had not been paid at the time of execution, and that, if it had been paid at all, it had been paid at some subsequent time. The plaintiff did not give any further evidence to establish such payment, and the Court of first instance, without calling on the defendants to establish their defence,

* Second Appeal, No. 1259 of 1880, from a decree of G. E. Knox, Esq., Judge of Banda, dated the 26th August, 1880, reversing a decree of Pandit Ram Narain, Munsif of Hamirpur, dated the 15th July, 1880.

(1) I. L. R., 2 All. 778.