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We, therefore, dismiss the appeal and also the application for revision, and uphold the conviction and sentences of the accused as they have been passed by the lower court.

Conviction upheld.

Hasan and
Fullan, J.J.

APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge, and
Mr. Justice Gokaran Nath Misra.*

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August, 25.

RAMESHWAR (DEPENDANT-APPELLANT) v. MUSAMMAT SHEORANI (PLAINTIFF), AND OTHERS (DEPENDANTS-RESPONDENTS).*

Transfer of Property Act (IV of 1882) section 95—Charge—Mortgage—Co-mortgagor redeeming the entire mortgage, position of—Limitation Act (IX of 1908), articles 132 and 148—Suit by a co-mortgagor redeeming the entire mortgage to enforce his charge, limitation for.

The position of a co-mortgagor redeeming the entire property is not that of a mortgagee but of a mere chargeholder, and article 132 applies to the suit brought to enforce the charge. [*Makhdum Khan v. Musammat Jadi* (1), *Wajihuddin Ashraf v. Ahmad Ashraf* (2), *Bhagwan Das v. Har Dei* (3), and *Qamar Jahan Begam v. Munney Mirza* (4), followed. *Ashfaq Ahmad v. Wazir Ali* (5), *Harprasad v. Raghunandan Prasad* (6) and *Sreemati Raj Kumari Debi v. Mukundi Lal Bandopadhyay* (7), dissented from.]

Mr. Bhagwati Nath Srivastava, for the appellant.

Mr. Radha Krishna, holding brief of Mr. Bisheshwar Nath Srivastava, for the respondents.

STUART, C. J., and MISRA, J.—This is a second appeal arising out of a suit to enforce a charge. The

*Second Civil Appeal No. 414 of 1926, against the decree of Jotindra Mohan Basu, Second Additional District Judge of Lucknow at Unao, dated the 21st of August, 1926, upholding the decree of Ganga Shankar Subordinate Judge, Unao, dated the 9th of October, 1925.

(1) (1906) 9 O.C., 91.

(2) (1927) I.L.R., 2 Luck, 618 ;
4 O.W.N., 730.

(3) (1904) I.L.R., 25 All., 227.

(4) (1925) 12 O.L.J., 313.

(5) (1892) I.L.R., 14 All., 1.

(6) (1909) I.L.R., 31 All., 166.

(7) (1920) 25 C.W.N., 283.

facts are that one Sheogovind mortgaged his property to one Dwarika Prasad now represented by defendants-respondents Nos. 2 and 3. After the death of Sheogovind, who died issueless, the defendant No. 1, Rameshwar, who is now the appellant before us, and another person, called Gajadhar, succeeded to his property. Gajadhar and Rameshwar brought a suit for redemption of the mortgage and obtained a decree. Gajadhar deposited the entire decretal amount and thus succeeded in redeeming the entire property mortgaged. Gajadhar died and his widow Musammatt Sheorani, plaintiff-respondent, brought a suit against Rameshwar, the appellant, to recover half the mortgage-money, together with interest by sale of Rameshwar's half share in the mortgaged property.

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The defence put forward by Rameshwar was to the effect that the suit brought by the plaintiff-respondent was barred by limitation, since it had been brought after 12 years from the date, when the cause of action had accrued for recovery of money in favour of the original mortgagee.

Both the courts below have rejected the appellant's plea and have granted to the plaintiff a decree for the sum claimed by her. He now comes to this Court in second appeal and the only point, which has been argued before us on his behalf, is the point of limitation.

It is contended on behalf of the defendant-appellant that when Gajadhar redeemed the property by paying the entire mortgage-money, he must be deemed to have been subrogated to the position of the original mortgagee and, if that is the correct position, which is to be assigned to him, the period of limitation in his case should not be considered to be different from that applicable to the case of the original mortgagee.

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We regret we are unable to accede to this contention. Under section 95 of the Transfer of Property Act (IV of 1882), where one of several mortgagors redeems the mortgaged property and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession. It is, therefore, clear that under the law, as it stands, the position of the co-mortgagor redeeming the entire property is not that of the mortgagee, but of a mere charge-holder. The learned Counsel for the appellant contended for the opposite view and in support thereof cited the case decided by the Full Bench of the Allahabad High Court, reported in *Ashfaq Ahmad v. Wazir Ali* (1). This view was dissented from in a decision by a Bench of the late Court of the Judicial Commissioner of Oudh reported in *Mukhdum Khan v. Musammat Jadi* (2), and this decision has been consistently followed in Oudh. Other High Courts in India, excepting the Allahabad High Court, have also taken the same view. It is only recently that one of us sitting singly has decided that a co-mortgagor redeeming the mortgaged property must be deemed to be a charge-holder and cannot be considered to be in the position of the original mortgagee. The case will be found reported in *Wajihuddin Ashraf v. Ahmad Ashraf* (3). We entirely agree with the view taken in that decision. Indeed no other view of law would be permissible in view of the clear wordings of section 95 of the Transfer of Property Act (IV of 1882).

We have now to determine what period of limitation would be applicable to a suit brought to enforce a charge. It is clear that article 132 of the Limitation Act (IX of 1908) would be applicable in such a case—Vide

(1) (1902) I.L.R., 14 All., 1.

(2) (1906) 9 O.C., 91.

(3) (1927) I.L.R., 2 Lucknow, 618=4 O.W.N., 730.

Bhagwan Das v. Har Dei (1). The said article runs as follows:—

Article 132—

To enforce payment of money charged upon immovable property.	Twelve years.	When the money sued for becomes due.
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The only point we have, therefore, to determine is when the money sued for became due. We have no doubt in our mind that the money paid by a co-mortgagor in redeeming the entire property mortgaged cannot be considered to have become due before it has been actually paid by the said co-mortgagor. Any other view, in our opinion, would lead to absurd results.

The learned Counsel for the defendant-appellant contended that the period of limitation should be considered to commence from the date, when the money became due under the original mortgage. This position, in our opinion, cannot be maintained. The cause of action of the charge-holder can only be considered to have arisen from the date, when he actually makes the payment and not from any earlier period. This view was taken by the late Court of the Judicial Commissioner of Oudh in a case reported in *Qamar Jahan Begam v. Munney Mirza* (2), and we entirely agree with that decision. The learned Counsel for appellant relied upon two cases, one reported in *Harprasad v. Raghunandan Prasad* (3) and the other in *Sreemati Raj Kumari Debi v. Mukundi Lal Bandopadhyay* (4). In our opinion the first case has no bearing upon the facts of the present case. It was held in that case that if a mortgagor discharges the whole mortgage debt and thereby obtains a charge on his co-mortgagor's share of the mortgaged property in respect of the amount paid by him in excess of his own share, such charge would take priority over a

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(1) (1904) I.L.R., 26 All., 227.

(2) (1925) 12 O.L.J., 313.

(3) (1909) I.L.R., 31 All., 163.

(4) (1920) 25 C.W.N., 283.

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subsequent mortgage, created on the same property by one of the other co-mortgagors. We have no such case before us here. Regarding the second case we must state respectfully that we are unable to agree with the rule of law laid down by the Bench of the Calcutta High Court in that case. It is strange that the learned Judges have not referred to article 132 of the Limitation Act, which is the only article applicable to suits brought to enforce a charge. The learned Judges held in that case that a co-mortgagor paying off the entire mortgage-money was in the position of a mortgagee and article 148 would be applicable in his case. We regret we cannot accept that view, since the weight of authority in this country is now clearly against that view. Any decision on the question of limitation based on that view and which overlooks article 132, which, in our opinion, is the only article applicable in a case where the plaintiff seeks to enforce his charge, cannot be considered to be laying down a correct rule of law.

We are, therefore, of opinion that the suit brought by the plaintiff-respondent is amply within limitation and there is no force in the appeal. We, therefore, dismiss this appeal with costs.

Appeal dismissed.