

APPELLATE CIVIL.

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

MOHAN LAL (PLAINTIFF-APPELLANT) v. MOHAN LAL,
AND OTHERS (DEFENDANTS-RESPONDENTS).*

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April, 7.

Mortgage—Redemption suit by a co-mortgagor not admitting the validity of redemption proceedings by another co-mortgagor, nature of—Jurisdiction in redemption suits, determination of—Appeal—Where mortgage money below Rs. 5,000 but value of property over Rs. 5,000, to what court does appeal lie.

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Where the plaintiff brought a suit for redemption of the entire property against the mortgagee and did not admit the validity of the redemption effected by some of the mortgagors through Court under a compromise, but characterised the proceedings taken by those mortgagors as collusive, *held*, that the suit cannot be treated as a suit for recovery of his share of the property mortgaged as one brought against his co-mortgagor who had already redeemed the property, but that it was a suit for redemption and purely for redemption and its value for the purposes of jurisdiction must be guided by the value of the principal amount of the mortgage money and not by the value of the mortgaged property.

Where, therefore, the principal money secured under a mortgage in a suit of this nature was Rs. 3,400, the appeal would lie to the District Judge and not to the Chief Court though the value of the mortgaged property was stated to be Rs. 6,000. [*Kedar Singh v. Mata Badal Singh* (1), and *Munwan Shankar Bakhsh Singh v. Ram Bahadur Singh* (2), relied upon. *Makhdum Khan v. Musammam Jadi* (3), distinguished.]

Mr. *Hyder Husain*, for the appellant.

Mr. *Radha Krishna*, for the respondent.

STUART, C.J., and MISRA, J. :—This is an appeal arising out of a suit for redemption brought in the Court of the Subordinate Judge of Unao. The suit was brought against the mortgagee for redemption on

* First Civil Appeal No. 13 of 1926, against the decree of Tika Ram Misra, Subordinate Judge of Unao, dated the 9th of April, 1923.

(1) (1909) 31 All., 44.

(2) (1923) 26 O.C., 297.

(3) (1906) 9 O.C., 91.

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the ground that the redemption obtained by some of the defendants through Court under a compromise was a collusive transaction. The principal money secured by the mortgage was stated in paragraph 2 of the plaint as Rs. 3,400 and the value of the property was stated to be Rs. 6,000.

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The defendants resisted the plaintiff's suit for redemption on various grounds, which it is not necessary for us to state here. It will be sufficient for the purposes of the present appeal to state that the suit was ultimately dismissed by the Court of the Subordinate Judge on the 9th of April, 1923.

The plaintiff carried the matter further in appeal to the Court of the District Judge of Lucknow sitting at Unao. It is unfortunate that the appeal against this decree, which was filed on the 12th of May, 1923, did not come up for hearing before the District Judge till the 23rd of January, 1926. On that date the case was argued on behalf of the appellant and the hearing of the appeal was adjourned to 31st of January, 1926. On the 31st of January preliminary objection was taken on behalf of the respondent to the effect that the appeal did not lie in the Court of the District Judge but in this Court. Further argument on this point on behalf of the appellant were heard on the 6th of February, 1926, and on the 13th of February, 1926, the learned District Judge held that the appeal was not cognizable by his Court, and on that finding he returned the memorandum of appeal to be presented to this Court. The memorandum of appeal was, thereupon, presented by the appellant to this Court on the 15th of February, 1926.

The appeal when presented to this Court was noticed as one which was rightly instituted in the Court of the District Judge, and in order to avoid delay and expense to the parties a notice was issued

by this Court to them to get the question of jurisdiction settled before the case was fixed for hearing on the merits.

The parties have now appeared before us today and the question of jurisdiction has been argued at great length.

After hearing the arguments on both the sides we are of opinion that the order of the learned District Judge cannot be maintained and that the appeal did actually lie to his Court and that it is to be heard by that Court and that Court alone. It is a settled rule of law that in redemption suits the jurisdiction is governed by the amount of the principal mortgage money and not by the value of the property mortgaged [vide *Kedar Singh v. Mata Badal Singh* (1)]. We have now to determine whether the suit as brought by the plaintiff in the Court of the Subordinate Judge of Unao can be reckoned as a suit for redemption. It has been contended before us, as it was before the learned District Judge, that the present suit was not a suit for redemption but a suit for possession brought by a co-mortgagor against another co-mortgagor who had redeemed the property, and in support of this proposition reliance was placed on the case of *Makhdam Khan v. Musammatt Jadi*, reported in (2). There is no doubt that it was held by the late Court of the Judicial Commissioner of Oudh in that case that the suit brought by a co-mortgagor against another co-mortgagor for recovery of possession of his share cannot be treated as a suit for redemption and that the appropriate article of the Limitation Act applicable to the suits of this character was article 144 and not article 148. But what we have to see in this case is whether the suit as laid by the plaintiff in his plaint was really a suit

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(1) (1909) I.L.R., 31 All., 44.

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

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of that character. The plaintiff did not admit the validity of the redemption effected by some of the mortgagors. He described in his plaint the proceedings taken by those mortgagors as collusive, and asked for a decree for redemption of the entire property. In those circumstances it appears to us that his suit cannot be treated as a suit for recovery of his share of the property mortgaged as one brought against his co-mortgagor who had already redeemed the property. His suit was purely a suit for redemption of the entire mortgaged property. The learned District Judge has taken great pains in considering the nature of the suit brought by the plaintiff, but in so doing he has taken this fact into consideration that in appeal the plaintiff relinquished the shares of the two mortgagors, Kusher and Jugga. In our opinion this fact cannot in any way be considered to be of any importance in determining the real nature of the suit brought by the plaintiff-appellant. The suit of the plaintiff-appellant as stated above and as it appears from the plaint was a suit for redemption and purely for redemption, and for the purposes of determining its jurisdiction we must be guided by the usual rule of law that the allegations in the plaint must determine the jurisdiction of the Court. It appears to be clear on the allegations made in the plaint that the suit as brought was not a suit between co-mortgagors *inter se* but it was a suit brought for redemption against the mortgagee, and the fact that the plaintiff while appealing from the decree of the trial Court excluded in his appeal the share of the two mortgagors would not in any way alter the character of the suit. In suits of such a nature it appears to us to be clear that the jurisdiction must be the same as in the case of ordinary suits brought for redemption.

We are supported in this view by the decision of the late Court of the Judicial Commissioner of Oudh

reported in *Munwan Shankar Bakhsh Singh and others v. Ram Bahadur Singh and others* (1) decided by KANHAIYA LALL, J. C. It was held in that case that the suit between persons claiming mutually the exclusive right to redeem the mortgage, one of whom had succeeded in inducing the mortgagee to allow him to redeem it, must be considered as suit of the nature of a suit for redemption, and the jurisdiction of the Court in such a case must be governed by the principal amount of the mortgage money and not by the value of the mortgaged property. We are in full agreement with the principle laid down in this case. In our opinion, therefore, the suit brought by the plaintiff in the Court of the Subordinate Judge of Unao was a suit for redemption and its value for the purposes of the jurisdiction must be guided by the value of the principal amount of the mortgage money, namely, Rs. 3,400, and not by the value of the mortgaged property which was stated in the plaint to be Rs. 6,000.

We, therefore, set aside the order of the learned District Judge passed on the 13th of February, 1926, and direct that the memorandum of appeal be returned again to the appellants for presentation to that Court.

As to costs, our order is that the respondents should pay their own costs in this Court and also pay the costs of the appellants.

We have already indicated in the earlier portion of this judgment the great delay which has occurred in the hearing of this appeal. We have already stated that the appeal was filed in the year 1923 and was heard by the learned District Judge in the year 1926. We hope that the learned District Judge will fix an early date for the hearing of this appeal.

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