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these persons they are liable to be punished as provided for by that section. We accordingly set aside the conviction and sentences passed by the learned Magistrate under section 117 of the Indian Penal Code and convict each of the eight abovenamed persons under section 9(*c*) of the Indian Salt Act, 1882, and sentence each of them to rigorous imprisonment for a term of six months which is the maximum punishment permitted by that section.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan, Chief Judge and Mr. Justice A. G. P. Pullan.

SYED IRSHAD AHMAD (PLAINTIFF-APPELLANT) v. MUSAMMAT SAIDUNNISA (DEFENDANT-RESPONDENT)* 1930 *August*, 15.

Civil Procedure Code (Act V of 1908), *section* 11—Res Judicata—*Redemption suit—Decree in a redemption suit declaring only the mortgagor's right of redemption, the amount of mortgage money and the property mortgaged —Subsequent suit for possession by redemption, whether barred by* res judicata.

The question whether a decree in a redemption suit operates as *res judicata* in a subsequent suit for redemption is always one of the interpretation of the decree in the previous suit. Where the decree in the previous suit only declared the plaintiff's right of redemption, the amount of the mortgage money and the property mortgaged it must be held that the decree did not provide by its own terms for the contingency of the extinction of the relationship of the mortgagor and the mortgagee and of the right to redeem but reserved to the mortgagor the liberty to seek relief thereafter for redemption and to the mortgagee for sale or foreclosure as the case may be in a manner and at a time permitted by law and the subsequent suit would not be barred by the rule of *res judicata*.

*Second Civil Appeal No. 47 of 1930, against the decree of Mirza Munim Bakht, Subordinate Judge of Malihabad at Lucknow, dated the 29th of October, 1929, confirming the decree of M. Yaqub Ali Rizvi, Munsif of Havali, Lucknow, dated the 30th of August, 1928.

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The precise form of the rule of *res judicata* with all its limitations is to be found in the provisions of section 11 of the Code of Civil Procedure. Its necessary attribute is that the matter in issue on both occasions has been heard and finally decided on the previous occasion. Whether it is so or not must depend upon the pleadings of the parties and the decision of the court in the first suit. The decision of the suit may end in a decree which does not operate *proprio vigore* to extinguish the relationship of the mortgagor and the mortgagee or by means of an application thereafter to be made in the same suit by either of the parties. If the intention to be gathered from the words used is only to declare and maintain such a relationship between the parties and also to fix the amount of the mortgage money due from the mortgagor to the mortgagee and to declare the mortgagor's right to recover possession on payment of that sum of money, then the matter as to when and how the mortgagor may recover possession of the mortgaged property on payment of the ascertained sum of money, or the mortgagee may foreclose or sell in default, and thus in either case the mortgage be extinguished, must be held not to have been finally heard and decided; and the matters so heard and decided must be deemed to be that the plaintiff is the mortgagor, the defendant is the mortgagee, the property specified in the decree is the mortgaged property, the amount of the mortgage money is the amount so ascertained and that the plaintiff has a right to redeem. The result would be that the trial of the issues in the second suit as to former matters will not be barred while it will be barred as regards the latter.

Kameswar Pershad v. *Rajkumari Ruttun Koer* (1) *Hari Ram* v. *Indrai* (2), *Muhamdi Begam* v. *Tafail Hasan* (3), *Ramji* v. *Pandharinath* (4), *Ram Dayal* v. *Raja Rampal Singh* (5), *Bhola Singh* v. *Jai Gobind* (6), and *Sheoraj Bahadur Singh* v. *Gajadhar Singh* (7), referred to.

Mr. *Rauf Ahmad*, for the appellant.

Mr. *Haider Husain*, for the respondent.

HASAN, C. J. and PULLAN, J. :—These are the plaintiff's appeals from the decree of the Subordinate Judge of Malihabad dated the 29th of October, 1929,

(1) (1892) L.R., 19 I.A., 234.
(2) (1922) I.L.R., 44 All., 730.
(3) (1925) I.L.R., 48 All., 17.
(4) (1918) I.L.R., 43 Bom., 334.
(5) (1903) 6 O.C., 367.
(6) (1911) 14 O.C., 57.
(7) (1917) 5 O.L.J., 698.

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modifying the decree of the Munsif, Havali, Lucknow, dated the 30th of August, 1928.

In the suit, out of which these appeals arise, the plaintiff claims to redeem and recover possession of a one-third share of the 22 bighas 11 biswas of land specified at the foot of the plaint on payment of a sum of Rs. 511 from the hands of the defendant, who, it is alleged, is in possession in the character of a mortgagee under a mortgage dated the 19th of July, 1871. The original mortgagor was one Syed Ahmad and the original mortgagee were Sheo Prasad and Indar Prasad. Syed Ahmad died issueless. One of his brothers was A'le Ahmad. The plaintiff is the son of A'le Ahmad. One Kabul Ahmad was a brother of the plaintiff. He is now dead. It is admitted that the plaintiff is entitled to a one-sixth share as the son of his father and to another one-sixth share as the brother of Qabul Ahmad in the mortgaged estate.

The court of first instance gave a decree for redemption in favour of the plaintiff in respect of both the shares on payment of the sum of Rs. 511-1-10 and interest at a certain rate as evidenced by the deed of mortgage. Both parties appealed to the court of the Subordinate Judge of Malihabad. The learned Subordinate Judge dismissed the plaintiff's appeal and allowed the defendant's appeal with the result that the decree of the court of first instance as stated above was modified and the plaintiff was given a decree for redemption of only a one-sixth share on payment of a certain sum of money. His claim to redeem the other one-sixth in the right of his deceased brother, Qabul Ahmad, was dismissed on the ground that it was barred by the rule of *res judicata*. The defendant has acquiesced in the decree passed by the learned Subordinate Judge but the plaintiff has appealed in respect of the one-sixth share his claim for which has been dismissed by the learned Subordinate Judge.

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In the two appeals, which he has filed in this Court, two questions have been raised for decision :—(1) Is the plaintiff's suit in respect of the redemption of the one-sixth share which he claims in the right of his brother, Qabul Ahmad, barred by the rule of *res judicata*, and (2) if not, on payment of what sum of money a decree for redemption should be made.

The facts bearing on the first question are as follows :—In the year 1905, Qabul Ahmad and three of his co-sharers in the mortgaged property brought a suit in the court of the Subordinate Judge of Mohanlalganj against the defendant, Musammat Saidunnissa, the representative of the mortgagee, for redemption of the entire mortgaged property on payment of a sum of Rs. 2,040-9-2, the original mortgage being for a sum of Rs. 2,300. It was a usufructuary mortgage. In the alternative those plaintiffs claimed redemption of two-thirds of the mortgaged property on payment of Rs. 1,360-6-1. The present plaintiff, Irshad Ahmad, who was minor then, was made a co-defendant. Exhibit A8 is the plaint of that suit. The suit ended in a compromise dated the 25th of August, 1905 (exhibit A2) and the court framed a decree in terms of it (exhibit A3). The defence is that this decree bars the present suit in respect of the one-sixth share which the plaintiff claims through his brother, Qabul Ahmad. As already observed, the court of first instance rejected the defence in its entirety but the lower appellate court has upheld it to the extent of the share just now mentioned.

The first question which we have set forth above was argued before us on two broad lines. The learned Advocate on behalf of the plaintiff contended that a second suit for redemption was not barred. On the other hand, the learned Advocate for the defendant contended that such a suit was always barred. It seems to us that neither of the two contentions so

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broadly stated can be accepted. The precise question for determination is as to whether the decree passed on the compromise constitutes bar by *res judicata* to the present claim for the relief of redemption of the one-sixth share, for the redemption of which Qabul Ahmad had laid a claim in the previous suit.

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The rule of *res judicata* relied upon by the defendant may be stated in two forms. The first is the general principle—*Nemo debet bis vexari pro una et eadem causa*. As observed by Lord MORRIS in *Kameswar Pershad* v. *Rajkumari Ruttun Koer* (1) "persons should not be harassed by continuous litigation about the same subject-matter." It is obvious that this general principle does not prescribe the limitations of the rule but those limitations are essential. The precise form of the rule of *res judicata* with all its limitations is to be found in the provisions of section 11 of the Code of Civil Procedure. In either form, giving the other attributes, the necessary attribute is that the matter in issue on both occasions has been heard and finally decided on the previous occasion. Whether it is so or not must depend upon the pleadings of the parties and the decision of the court in the first suit. The decision of the suit may end in a decree which does not operate *proprio vigore* to extinguish the relationship of the mortgagor and the mortgagee or by means of an application thereafter to be made in the same suit by either of the parties. If the intention to be gathered from the words used is only to declare and maintain such a relationship between the parties and also to fix the amount of the mortgage money due from the mortgagor to the mortgagee and to declare the mortgagor's right to recover possession on payment of that sum of money, then the matter as to when and how the mortgagor may recover possession of the mortgaged property on payment of the ascertained sum

(1) (1892) L.R., 19 I.A., 234.

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of money, or the mortgagee may foreclose or sell in default, and thus in either case the mortgage be extinguished, must be held not to have been finally heard and decided; and the matters so heard and decided must be deemed to be that the plaintiff is the mortgagor, the defendant is the mortgagee, the property specified in the decree is the mortgaged property, the amount of the mortgage money is the amount so ascertained and that the plaintiff has a right to redeem. The result would be that the trial of the issues in the second suit as to former matters will not be barred while it will be barred as regards the latter.

From what has been stated above, it follows that the question is always one of interpretation of the decree in the previous suit. What was the decree in the previous suit of the present case? It was as follow:—". . . . . In the aforementioned suit the parties have compromised in this way that a decree for redemption of two-thirds of 22 bighas 11 biswas of land be made in favour of the plaintiff as against the defendant No. 1, Musammat Saidunnissa, on payment of Rs. 1,700 and that whenever the money is paid at that time the plaintiffs shall be entitled to enter into the possession of the two-thirds share and the parties shall bear their own costs." (exhibit A2).

The interpretation which we place on it is that the decree declared the plaintiffs' right of redemption of two-thirds of the land mentioned above as against the defendant, that the decree fixed the amount of the mortgage money to be the sum of Rs. 1,700 and that it further declared the plaintiffs' right to enter into possession of the property specified in the decree on payment of the aforesaid sum of money in future and whenever he deemed fit to do so. On the reasoning stated in the preceding paragraph of this judgment, it must be held that the decree did not provide by its own terms for the contingency of the extinction of the

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relationship of the mortgagor and the mortgagee and of the right to redeem but reserved to the mortgagor the liberty to seek relief thereafter for redemption and to the mortgagee for sale or foreclosure as the case may be in a manner and at a time permitted by law. What the decree finally decided was to declare the plaintiff's right of redemption, the amount of the mortgage money and the property mortgaged. We must therefore answer the first question in the negative.

Before we take leave of this part of the case we would mention that the learned Advocate for the plaintiff cited the following cases in support of the argument that there is no bar of *res judicata* :—*Hari Ram* v. *Indraj* (1), *Muhamdi Begam* v. *Tufail Hasan* (2), *Ramji* v. *Pandharinath* (3), and the learned Advocate for the defendant cited the following cases in support of his argument to the contrary :—*Ram Dayal* v. *Raja Rampal Singh* (4), *Bhola Singh* v. *Jai Gobind* (5), and *Sheoraj Bahadur Singh* v. *Gajadhar Singh* (6). According to our judgment the question is one of construction of the previous decree and therefore we think that no useful purpose will be served by considering and examining the decisions in the cases cited by the learned Advocates.

On the second question as to the amount of money which the plaintiff ought to pay for the purpose of redemption, we heard arguments at some length both on behalf of the plaintiff and the defendant, the latter having filed a petition of cross-objections, but the conclusion to which we have reached is that the judgment of the court of first instance is correct in this behalf.

We accordingly allow the appeals, dismiss the cross-objections, set aside the decrees of the lower ap-

(1) (1922) I.L.R., 44 All., 730.
(2) (1925) I.L.R., 48 All., 17.
(3) (1918) I.L.R., 43 Bom., 384.
(4) (1903) 6 O.C., 367.
(5) (1911) 14 O.C., 257.
(6) (1917) 5 O.L.J., 698.

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pellate court and restore the decree of the court of first instance with costs in this and the lower court. The decree prepared in the court of first instance will be modified in this respect that the time allowed for redemption by that decree will be extended to three months from the date of our judgment.

Appeal allowed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan, Chief Judge and Mr. Justice A. G. P. Pullan.

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August, 25.

ABADI BEGAM, RANI AND ANOTHER (DEFENDANTS-APPELLANTS) v. MUHAMMAD KHALIL KHAN AND THREE OTHERS (PLAINTIFFS) AND OTHERS (DEFENDANTS-RESPONDENTS)*

Oudh Estates Act (I of 1869), sections 3, 13, 14 and 22(7), (8), (9) and (11)—Will of a Taluqdar—Interpretation of wills—Taluqdar bequeathing his estate to his two widows in equal shares—No words indicating bequest of restricted interest—Devisees, whether entitled to an absolute or only a life interest—Residue vesting in the junior widow, if an interest in the estate under section 13—Taluqdari estate, what is—Villages acquired subsequent to the sanad *by settlement decree, whether estate*—Sanad—*Terms of* sanad, *how far to govern succession to taluqdari estate—'Ordinary law' in section 22(11), meaning of—Primogeniture* sanad, *interpretation of—Champerty, law of—Sale deed of a share of the property in suit—Construction of documents—Document described as sale deed but no price fixed and though a certain sum mentioned as consideration but no part paid or promised to be paid and the whole amount left with the speculator for meeting expenses of suit—Transaction, whether an out and out sale or an agreement to divide the fruit of contemplated litigation—United Provinces Land Revenue Act (III of 1901), section 233(k)—Persons not seeking litigation but merely defending possession, section 233(k), applicability to—Limitation Act (IX of 1908), Article 141—Adverse*

*First Civil Appeal No. 51 of 1929, against the decree of Mr. Justice E. M. Nonavutty, Judge of the Chief Court of Oudh at Lucknow, dated the 15th of April, 1929.