

## APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge and  
Mr. Justice Muhammad Raza.*

1927  
Decem-  
ber, 22.

SYED IRSHAD AHMAD (PLAINTIFF-APPELLANT) v. MUSAMMAT SAIDUNNISA AND ANOTHER (DEFENDANTS-RESPONDENTS).\*

*Limitation Act (IX of 1908), First Schedule, Article 182—Redemption suit—Compromise decree—Mortgagee not authorized to sell in default of payment and no date fixed for payment—Decree, whether one under section 92 of Act IV of 1882 or under section 375 of Act XIV of 1882—Limitation for execution of decree.*

Where a compromise decree passed in 1905 in a suit for redemption stated only that if the mortgagors paid a specified sum of money at any time to the mortgagees the latter were to restore possession of the mortgaged property to them, *held*, that it was not a decree under section 92 of Act IV of 1882, in that it gave no authority to the mortgagee to sell the property if the payment was not made on or before due date by the mortgagor for which no date had been fixed. It could only be treated as a decree passed under the provisions of section 375 of Act XIV of 1882 and the period of limitation for execution of such a decree was clearly the period provided by Article 182 of the First Schedule of the Limitation Act (IX of 1908).

Messrs. *Niamatullah and Rauf Ahmad*, for the appellant.

Mr. *Haider Husain*, for the respondents.

STUART, C. J. and RAZA, J. :—The question raised in this appeal can only be decided after examination of the facts. We have it that in the year 1905 Iltafat Ahmad, Maqbul Ahmad, Naushad Ahmad and Qabul Ahmad instituted a suit for redemption of a certain mortgage against Saidunmissa and Irshad Ahmad. At that

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\*Execution of Decree Appeal No. 24 of 1927, against the decree of Syed Asghar Hasan, 3rd Additional District Judge of Lucknow, dated the 31st of March, 1927, reversing the order of the Subordinate Judge of Mohanlalganj, dated the 24th of August, 1926.

time, the procedure in respect of mortgage suits was governed by the provisions of certain sections of Act IV of 1882. The parties entered into an amicable arrangement and a decree was passed giving effect to the terms of that arrangement. The decree stated that if the plaintiffs, who represented the mortgagors, paid Rs. 1,700 at any time to the defendants the representatives of the mortgagees, the defendants were to restore to them the possession of the mortgaged property. That was all. The facts are somewhat peculiar. Irshad Ahmad, as has been stated, was there representing the mortgagees. He was then a minor. He was not a party to the compromise. Now it is this very Irshad Ahmad who is applying to redeem the property claiming that he is the representative of one of the mortgagors. In 1926 he applied to pay the money into court and to redeem the property as against Saidunnisa. The lower appellate court has dismissed his application and he appeals here. The first question which we have to decide is what is the nature of the decree of which execution is sought. It is clearly not a decree under section 92 of Act IV of 1882. The first outstanding fact, which shows that it is not a decree under section 92, is that it gives no authority to the mortgagee to sell the property if the payment is not made on or before due date by the mortgagor. The second fact is that no date is fixed. As it is thus not a decree under section 92 it can only be treated as a decree passed under the provisions of section 375 of Act XIV of 1882. As it is such a decree, we have to find the period of limitation. The period of limitation is clearly the period provided by Article 182 of the First Schedule of the Limitation Act (IX of 1908). As such, the application is time-barred. We, therefore, dismiss this appeal with costs.

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SYED  
IRSHAD  
AHMAD  
v.  
MUSAM-  
MAT SAID-  
UN NISSA.

*Stuart, C. J.  
and Raza, J.*

*Appeal dismissed.*