

## APPELLATE CIVIL

*Before Mr. Justice Heald and Mr. Justice Cunliffe.*

MA HLA SAING AND ONE

*v.*

MA SU WE AND THREE.\*

1927

April 27.

*Subject-matter, value of, in a redemption suit—Mortgage money not basis of valuation for jurisdiction—Suits Valuation Act (VII of 1887), s. 1 (ix).*

*Held*, that in a redemption suit, where the mortgagee is in possession, the subject-matter is the land sought to be redeemed and the valuation of such suits for the purpose of jurisdiction should be based on the value of the land.

*Kalee Kumar Nag v. N. Mayappa Chetty*, 5 L.B.R. 208; *Kyaw Dun v. Maung Kyaw*, 1 L.B.R. 96—followed.

*Maung Ni*—for Applicants.

HEALD, J.—The 1st applicant, Ma Hla Saing, claimed to be the granddaughter and sole heir of Ma Min Le, who was admittedly the mortgagor of the property in suit, and she and her husband, the 2nd applicant, Po Ya, claimed to redeem that property, which they valued at Rs. 13,000 from the respondents for Rs. 800, the first three respondents being, as applicants alleged, the sole heirs and legal representatives of the mortgagee, one Pwa Gyi, while the 4th respondent was admittedly a mortgagee of the property under a mortgage made by the first three respondents.

The 1st respondent, Ma Su We, alleged that her late husband, Hla Baw, who was, it may be noted, a grandson of Ma Min Le's brother, Kywet Pyu, had been adopted by Ma Min Le as her son, so that although Ma Su We herself would not be one of Ma Min Le's heirs, because her husband Hla Baw died before Ma Min Le, her children by Hla

\*Civil Miscellaneous Application No. 127 of 1926.

1927

MA HLA  
SAING  
AND ONE  
2.  
MA SU WE  
AND THREE.  
HEALD, J.

Baw would be grandchildren of Ma Min Le, and would be her sole heirs, since the 1st applicant was not, as she claimed to be, Ma Min Le's grandchild either natural or adoptive.

The position was thus that the 1st respondent Ma Su We was admittedly the sole heir and legal representative of the mortgagee Pwa Gyi, and that if her husband Hla Baw's adoption by Ma Min Le was established and Ma Hla Saing's claim, which as it turned out was based on her alleged adoption by Ma Min Le's daughter Ma Nan Thu, was not established, then Ma Su We's children the 2nd and 3rd respondents would be the sole heirs and legal representatives of Ma Min Le, the mortgagor, and the later mortgage made by Ma Su We and her children would be in effect a mortgage made by both the parties to the original mortgage.

The main dispute between the parties centered round the two alleged adoptions, namely that of the 1st applicant Ma Hla Saing by Ma Min Le's daughter Ma Nan Thu, and that of the 1st respondent's husband Hla Baw by Ma Min Le herself.

The trial Court found that Ma Hla Saing failed to establish the relationship which she alleged and that the applicants' suit must be dismissed on that ground. It also came to the conclusion that the alleged adoption of Hla Baw by Ma Min Le was established.

A bench of this Court on appeal held that both the alleged adoptions were established. It found therefore that the 1st applicant Ma Hla Saing and the 1st respondent's children, the 2nd and 3rd respondents, were the heirs and legal representatives of the mortgagor Ma Min Le, and that the 1st respondent herself was the representative of the mortgagee, Pwa Gyi, the 4th respondent being a

sub-mortgagee of all the mortgagee's rights and a mortgagee of the rights of two out of the three representatives of the mortgagor. On the strength of the decision of a full bench of this Court in the case of *Po Thu Daw v. Po Than* (1), the learned Judges found that the applicants were entitled to a one-third share of the land, the 2nd and 3rd respondents being each entitled to one-third and they accordingly gave the applicants a decree for redemption of one-third of the land on payment of one-third of the mortgage money, the mortgage being of course, as is usual in this country, a possessory mortgage.

The applicants applied for review of that judgment, but review was refused. They now apply for leave to appeal to His Majesty in Council. For the case to fall within section 110 of the Code the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards and the amount or value of the subject-matter on appeal to His Majesty in Council must be ten thousand rupees or upwards, or else the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value.

A question thus arises as to what is the amount or value of the subject-matter of a suit for the redemption and recovery of land held by the mortgagee under a possessory mortgage.

The practice of this Court is to regard the value of the property sought to be recovered as the value of the subject-matter of such suits for the purposes of pecuniary jurisdiction. It may be noted that it is laid down in the Rules of this Court regulating Advocates' and Pleaders' Fees that for purposes of those rules "the valuation of suits and appeals shall be determined according to the rules laid down in the Court-Fees Act,

1927

MA HLA  
SAING  
AND ONEv.  
MA SU WE  
AND THREE.

HEALD, J.

(1) (1923) 1 Ran. 316.

1927

MA HLA  
SAING  
AND ONEv.  
MA SU WE  
AND THREE.

HEALD, J.

provided that in cases falling within section 7 (v), (vi), (ix) and x (d) of the said Act the value of the property shall be taken." Suits against a mortgagee for the recovery of the property mortgaged fall under section 7 (ix) of the Court-Fees Act and therefore fall within the proviso to the above rule, so that for the purposes of those rules the valuation of such suits is the value of the property. Section 8 of the Suits Valuation Act excludes suits under section 7 (ix) of the Court-Fees Act from the category of suits in which the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same, but does not say what is to be the valuation of suits under section 7 (ix) for purposes of jurisdiction. It would thus appear that although for purposes of court-fees the value of suits for the recovery of the property mortgaged is "the principal money expressed to be secured by the instrument of mortgage" it was not the intention of the legislature that the mortgage money should be the basis of the valuation for purposes of jurisdiction. There seems, however, to be little judicial authority as to what ought to be the valuation of such suits for purposes of jurisdiction, and not a single case on the subject has been brought to our notice. There is an *obiter dictum* in the case of *Kalee Kumar Nag v. N. Mayappa Chetty* (1), where the learned Judge who made the reference said: "In my opinion where the mortgagee is in possession of the mortgaged property, so that the success of the redemption suit involves the recovery of its possession by the mortgagor, the subject-matter of the suit may be taken to be the mortgaged property." The case of *Kyaw Dun v. Maung Kyaw* (2), which was cited by the learned Judge in the case mentioned above was, like the present case, a suit for redemption by a mortgagor

(1) 5 L.B.R. 208.

(2) 1 L.B.R. 96.

where the mortgagee was in possession of the mortgaged property, and the Court held that "In a redemption suit the subject-matter of the suit is the land sought to be redeemed." That is the only direct judicial authority on the point which I have been able to find and I accept it.

I would therefore hold that the value of the subject-matter of the present suit in the Court of first instance was Rs. 13,000. Further it appears that similar questions arise between applicants and the first respondent in another suit which was instituted at the same time as the present suit and in which the valuation of the property sought to be redeemed was Rs. 12,000. That suit has been remanded to the trial Court by this Court in Civil First Appeal No. 202 of 1925 on the basis of the findings in the judgment against which applicants now desire to appeal to His Majesty in Council. Also it is alleged that similar questions are likely to arise between the parties in respect of a large number of other lands, which were mortgaged by Ma Min Le. It appears therefore that the decree against which applicants wish to appeal to His Majesty in Council involves a claim or question to or respecting property of the value of more than Rs. 10,000.

I would accordingly grant leave to appeal to His Majesty in Council.

CUNLIFFE, J.—I concur.

1927

MA HLA  
SAING  
AND ONE  
v.  
MA SU WE  
AND THREE.  
HEALD, J.