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iff, as Guláya's successor in office, was entitled to the whole of the *inám* land claimed by him.

It was contended that the plaintiff's claim to fields Nos. 360 and 372 was barred by time, as the mortgage to Dhanápá was more than twelve years anterior to the suit. The possession, however, of the mortgagee during Guláya's life was not adverse to him, and as the suit was brought only eight years after his death, it consequently was not barred.

We vary the District Judge's decree, awarding the plaintiff the lands in suit, by awarding also mesne profits in respect of the said lands from the institution of the suit until the delivery of possession to the plaintiff. We confirm the District Judge's order as to costs; but as there can be no doubt that Shivlingápá and Dhanápá advanced money to Guláya, on the security of the *inám* lands, in good faith, believing the security to be perfectly good, we make no order as to the costs of Appeal No. 446 of 1883. The plaintiff to pay the costs of Appeal No. 627 of 1883.

Decree varied.

APPELLATE CIVIL.

Before Mr. Justice Birdwood.

1885. *June 26.*

UMARKHA'N, AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANT, *v.* MAHOMEDKHA'N AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Court Fees Act VII of 1870, Sec. 7, Cl. 9—Redemption suit—Separate memorandum of appeal presented by each of two appellants, proper fees chargeable on.

A decree having been given by the lower Courts in a redemption suit, directing that the mortgaged property should be redeemable on payment of the amount expressed to be secured by the mortgage deed, *viz.* Rs. 1,152-15-4, to the defend ants,—*viz.* Rs. 568-9-8 to the defendant Umarkhán and Rs. 584-5-8 to the defend- ant Moro and two others,—appeals were preferred to the High Court by Umarkhán and Moro, each of them presenting a separate memorandum of appeal. A question arose as to what Court fees should be levied on them. On reference by the Taxing Officer of the Court,

* Reference under section 5 of the Court Fees' Act.

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Held, that the Court fees to be computed upon each memorandum of appeal was, under section 7, clause 9 of the Court Fees Act VII of 1870, to be according to the principal money expressed to be secured by the deed of mortgage, *viz.*, Rs. 1,152-15-4.

THIS was a reference by the Taxing Officer of the High Court under section 5 of the Court Fees Act VII. of 1870.

The reference was as follows :—

"The facts necessary for the disposal of the question are :—

"Plaintiffs, Mahomed and two others, sued to redeem from defendants Gopál and five others one-fifth share of the *khoti takshim* of the village of Rajivali. Plaintiffs alleged that the *khoti* once belonged to Daryákhán Enáyatkhán Deshmukh, who, along with other property, mortgaged it (29th September 1826) to one Govind Jagannáth Gokhlé; that with the exception of the said *khoti* in the village of Rajivali the rest of the property had been redeemed, and that Daryákhán sold his right (10th March 1879) in the *khoti* to the plaintiffs by a registered deed of sale.

"As purchasers of the equity of redemption, plaintiffs brought this suit to redeem.

"The Subordinate Judge of Mahád found, from the copy of the deed of mortgage produced at the trial by one of the defendants, that Rs. 1,152-15-4 was the principal sum of money expressed to be secured by the deed of mortgage, and that the same was still due to the mortgagee. He decreed that plaintiffs should take possession of the one-fifth of the *khoti takshim* in dispute on payment of Rs. 1,152-15-4 to defendants, *viz*, Rs. 568-9-8 to defendant No. 3 Umarkhán (appellant), and Rs. 584-5-8 to defendants Nos. 2, 4 and 5, Mahádev, Moro and Bálkrishna, respectively in equal shares.

"As regards appellant Umarkhán, defendant No. 3, the Subordinate Judge found that he was a sub-mortgagee and in possession of the property in dispute under a decree of the Court of Mahád in Suit No. 1009 of 1866, and that he had a right to remain in possession till he was paid Rs. 568-9-8.

"As regards the other defendants, Mahádev, Moro and Bálkrishna, the Subordinate Judge found that the first was the son and the two latter nephews of the original mortgagee, Govind.

"On appeal the decree of the Subordinate Judge was modified, and the Appellate Court directed the plaintiffs to take possession of the mortgaged property on payment of Rs. (200) two hundred and it directed the said sum to be paid to appellant, defendant No. 3, Umarkhán.

"Umarkhán has presented a memorandum of second appeal, urging, among other grounds, that plaintiffs have no right to redeem; that the alleged deed of sale of the equity of redemption, under which the plaintiffs claim, was invalid, and did not give any right to the plaintiffs to redeem, &c.

"In suits for recovery of the property mortgaged, the Court fees payable on the plaint are determined and estimated under clause 9, section 7 of the Court Fees Act, which provides that, in suits against a mortgagee for the recovery of the property mortgaged and in suits by a mortgagee to forclose the mortgage, the amount of fee payable shall be computed according to the principal money expressed to be secured by the instrument of mortgage.

"The same clause is applicable to appeals and second appeals. By a decision, dated the 18th August, 1874, the Honorable the Chief Justice decided that in an appeal between a mortgagor and mortgagee, though the appeal may be in regard to a very small error in respect to a very trifling sum of money, the same fee as is leviable on plaint is also leviable under clause 9, section 7, of the Court Fees' Act, on the memorandum of appeal. The ruling above referred to has been followed in every case of mortgage ever since 1874.

"In the present case, though the appellant's interest in the property in dispute is limited to Rs. 584-5-8, his appeal necessarily re-opens the whole question of mortgage, and, therefore, he has to pay the Court fee on the sum of principal money expressed to be secured by the deed of mortgage, *i.e.*, Rs. 1,152-15-4.

"A separate memorandum of second appeal has been filed by Moro Visáji Gokhlé. The Subordinate Judge's decree awarded Rs. 584-5-8 to the three defendants, Mahádev, Moro and Bálkrishna, to be equally divided between the three. Appellant Moro's interest amounts to Rs. 194-12-6. The Subordinate

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Judge's decree, however, was modified, and the Appellate Court's decree gave nothing to appellant Moro. He appeals to the High Court. According to the decision quoted above, appellant Moro also should pay a Court fee, on the memorandum of his appeal, of Rs. 85,—that is, according to the principal money expressed to be secured by the deed of mortagage (1,152-15-4).

"To allow each of the appellants to pay the Court fee in proportion to the extent of his respective lien would be to convert appeals in redemption suits into simple money suits, which the decision of the 18th August, 1874, does not at all contemplate (*vide* Note A).[1]

(1) NOTE A.

Special Appeal No. 385 of 1874.

RÁJGOPÁL AND ANOTHER (PLAINTIFFS), APPELLANTS, *v.* RÁMKRISHNA (DEFENDANT), RESPONDENT.

A. mortgaged certain property to B. and six others for Rs. 2,603, who subsequently sub-mortgaged it to the father of R. for Rs. 3,500. R. and G. purchased the equity of redemption in the said property for Rs. 561, and brought a suit to recover the same, making the original mortgagor and the first and second mortgagees defendants in the cause. They valued their claim at Rs. 4,526-9-7, being the amount of the consideration stated in the first mortgage-deed, with interest.

The Subordinate Judge ordered redemption on payment of Rs. 5,761-13-10 to the second mortgagee (R.), the same being the principal amount with interest and costs incurred in effecting repairs to the mortgaged property.

R., however, feeling himself aggrieved by this decision, appealed to the District Judge, and valued his claim at Rs. 3,500, the amount secured by his mortgage-deed. The District Judge amended the lower Court's decree by awarding him, in addition to what had been decreed by that Court, a sum of Rs. 5,500, with interest.

The plaintiffs (R. and G.) thereupon preferred a special appeal, and valued their claim at Rs. 2,603, the amount secured by the first mortgage, urging at the same time that the amount awarded by the lower Appellate Court on account of repairs and interest was excessive.

The question referred by the Taxing Officer for decision was:—

"What is the criterion for valuation in a suit brought by the purchasers of the equity of redemption against the original mortgagor and the first and second mortgagees to recover possession of the mortgaged property, regard being had to the fact that the second mortgagee claimed a certain amount on account of repairs made by him to the mortgaged property and also on account of interest?"

The mortgagor appeals here against the amount of the sum ordered to be paid by him as a condition precedent to his getting redeemed the mortgaged house. He says he is not liable to as much for repairs as has been decreed below.

I do not think the appeal is one for money under section 7, clause 1, of the Court Fees Act, but it is still an appeal or suit for recovery of the property mortgaged, and to be estimated under clause 9 of section 7. Section 11 does not

"My humble opinion is that each memorandum of appeal should independently of each other bear Court fee of Rs. 85-0-0. But as apply, as the more the mortgagee gets, the less the mortgagor takes by his decree.

(Signed) JOHN JARDINE,
Acting Registrar.

I concur in the opinion of the Registrar.

(Signed) M. R. WESTROPP,
Chief Justice.

18th August 1874.

COPY OF THE MINUTES RECORDED BY THE HONOURABLE THE CHIEF JUSTICE AND THE HONOURABLE MR. JUSTICE MELVILL ON CERTAIN SECTIONS OF THE BILL ENTITLED "THE STAMP AND COURT FEES ACT, 1876."

(MINUTE OF THE HON'BLE MR. JUSTICE MELVILL.)

With reference to the Bill to amend the law relating to stamps and Court fees now under the consideration of the Legislature, I would call attention to clause 9 of section 62, which corresponds with clause 9, section 7 of Act VII of 1870, and provides that in suits against a mortgagee or incumbrancer for the recovery of the property mortgaged, and in suits by a mortgagee to foreclose the mortgage, the amount of fee payable shall be computed according to the principal amount expressed to be secured by the instrument of mortgage or charge.

No objection can be raised to the above mode of computing the fee on the plaint; but on a reference under section 5 of Act VII of 1870, the Chief Justice has decided (as I understand) that the same fee is leviable on a petition of appeal in a suit between mortgagor and mortgagee, though such appeal may be only in regard to a small error in taking the account, such as an allowance or disallowance of a trifling sum on account of interest or repairs.

Very great hardship is, I think, entailed by this state of the law. I have known instances in which the fee on the petition of appeal far exceeded the amount actually in dispute in the appeal. It seems clear that, when the appeal is only against that portion of a decree which determines the amount of money payable by one party to another, and not against the portion which deals with the mortgaged property, the law ought not to require the appellant to pay more than he would have to pay in an appeal in a suit for money.

I would propose that the matter be brought to the notice of the Legislative Department with a view to an amendment of the law.

12th April 1877.

(MINUTE OF SIR M. R. WESTROPP, C.J.)

I agree to the course proposed by Mr. Justice Melvill, and in the absence of the other Judges request the Registrar to communicate with the Legislative Department to the above effect. The present state of the law causes much hardship on suitors. Copies of Mr. Justice Melvill's and this minute should be sent to the Secretary to the Government of India in the Legislative Department.

1st May 1877.

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I entertain doubt as to the correctness of my view, I respectfully submit the question for the decision of the Honorable the Chief Justice under section 5, Act VII of 1870."

BIRDWOOD, J.—The plaintiffs do not sue to redeem the whole of the property mortgaged by their vendor, Daryákhán, to the father of the first two defendants, Gopál and Mahádev. They allege that a portion of that property had already been redeemed by Daryákhán before he sold to them the equity of redemption of the remainder, which alone they now claim to recover, on payment of Rs. 200, the sum said to be now remaining due to the mortgagee. The allegation is, in effect, that the original debt of Rs. 1,201, Chándvad currency, or Rs. 1,152-15-4, British currency, was distributed over the whole of the mortgaged property, and that, by an arrangement between the original mortgagor and mortgagee, the amount remaining due of the original debt is now secured separately on the property in suit. Such being the nature of the claim, it may be a question whether the Subordinate Judge, who tried the original suit, ought not, when deciding as to the proper Court fee for the plaint, to have held that the case was governed by the ruling in *Dhondo Rámchandra* v. *Bálkrishna Govind*[1]. He does not, however, refer to that decision in his judgment; and a Court fee was levied by him on the principal money expressed to be secured by the mortgage-deed, —that is, on its equivalent in British currency. Whether he was right, is not the question now before the Court. Assuming, even, that he was wrong, and that he should have applied the above ruling to the present case, by charging a Court fee only on the sum of Rs. 200, said to be secured by the share of the *khoti* village, which alone was described in the plaint as still subject to a mortgage-lien, still, it is not, I think, open to either of the present appellants to claim the benefit of the ruling; for it is clearly the principal object of both the appeals to have the decree of the lower Appellate Court, which affirmed the plaintiffs' view of the case, set aside, and it is the object of one of the appellants to restore the decree of the Court of first instance, which declared that the whole of the original mortgage-debt of Rs. 1,152-15-4

(1) Printed Judgments for 1882, p. 62.

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was still due, and awarded redemption on payment of that sum, Rs. 568-9-8 having been made payable to the sub-mortgagee, the appellant Umarkhán, and Rs. 584-5-8 to the defendants Mahádev, Moro, and Balkrishna, of whom Moro has appealed. The lower Appellate Court ordered payment of the Rs. 200 found to be due on the mortgage to Umarkhán, who is in possession of the land in suit, under a decree for Rs. 568-9-8 obtained by him against the paternal uncle of defendants Nos. 1 and 2. Umarkhán denies that plaintiff has any right to redeem at all, and both Umarkhán and Moro contend that the whole of the original mortgage-debt is still due, and that no part of the property originally mortgaged was ever redeemed by Daryákhán. They ask, in effect, that the plaintiff's claim, if admissible at all, should be adjudicated with reference to the original mortgage-bond, and not with reference to the assignment of Daryákhán's equity of redemption, relied on by the plaintiffs; and each of the appeals is therefore, in my opinion, properly chargeable with a fee calculated on the "principal money expressed to be secured by the instrument of mortgage." In this view I affirm the decision of the Taxing Officer.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Nánábhái Haridás, and Mr. Justice Birdwood.

1885. *July* 9.

SHA'BUDIN MAHOMED, PLAINTIFF, *v.* HIRNAK RAJNAK AND OTHERS, DEFENDANTS.*

Stamp Act I of 1879, *Sec.* 7—*Contracts for several loans of rice on a single bond—Construction.*

Sixteen persons borrowed a quantity of rice from the plaintiff, and executed to him a bond for the debt, showing how much rice had been borrowed by each of them. They did not bind themselves to repay the entire debt jointly and severally.

Held, that the instrument should be regarded as comprising sixteen distinct contracts, so as to fall within the purview of section 7 of the Stamp Act I of 1879, and should be stamped accordingly.

* Civil Reference, No. 8 of 1885.