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Special Appeal No. 168 of 1865.

BA'PU'SA' bin SADA'SHIV *Appellant.*
RA'MJI bin GOPA'LJI..... *Respondent.*

Mortgagee in Possession of Land—Expenses—Revenue Survey.

Held that a mortgagee in possession was entitled to be allowed for expenses incurred in connection with the Revenue Survey of the land mortgaged to him.

THIS was a special appeal from the decision of C. B. Izon, Assistant Judge of the Puná District, confirming, in appeal, the decree of the Munsif of Khed.

Gopál bin Santáji sued to redeem certain land, mortgaged by him to the defendant, Bápúsá : stating that he was ready to pay Rs. 921, the amount advanced to him, which the defendant would not accept.

The defendant answered that, besides the sum advanced, there were due by the plaintiff the following items :—share of profit on the land for five years, at Rs. 200 a year, the plaintiff having cultivated the land, during that period, as a partner of the defendant,—Rs. 1,000 ; money due for house rent, Rs. 316-10-8 ; expenses incurred in connection with the Survey measurement of the land, Rs. 275 ; expenses for cutting prickly pear, Rs. 50 ; registering deed, Rs. 3 ; and interest, Rs. 6.

The Munsif decreed for the plaintiff ; ordering that the defendant should give over possession of the property claimed, on payment by the plaintiff to him of Rs. 921. This decree was confirmed, on appeal, by the Assistant Judge, who held that the defendant had failed to prove an agreement in support of his claim for Rs. 1,000 ; and, with reference to the other items, observed that the expenses of repairing boundaries and cutting hedges were not such expenses as made it just that the mortgagee should be specially reimbursed for them : as they were part of the agricultural expenses, of which the advantage, as well as the outlay, lasted at most

a year or two ; and not such expenses as those of repairs to a house, permanent repairs of dams, or other such expenses, of which the advantage is permanent, and about which it only remains to inquire whether they are also requisite. He found that the expenses " were proved satisfactorily as to the prickly pear, and in part only as respects the rest."

The case was heard before NEWTON and WARDEN, JJ.

Harishankar Bálkrishna, for the appellant :—The lower court erred in not allowing the items claimed by the plaintiff, and also in not joining the other co-sharers as plaintiffs.

Dhirajál Mathurádás, *contra* :—The expenses have not all been proved ; and such as have been are petty ones, which a mortgagee should defray, so long as he holds possession of the land. The non-joinder of plaintiffs is not a ground of special appeal, affecting the decision of the case on the merits.

PER CURIAM :—We consider that the point raised in the memorandum of special appeal, regarding the non-joinder of other co-sharers as plaintiffs in this action, has been sufficiently answered by the court below. With regard to the objection of disallowance of Rs. 1,000, we find that the Judge holds that the claim is supported by no evidence ; and there is no such admission in respect of this sum, as was contended for in the course of the argument.

With regard to the other items, we consider that the expense of making boundaries should be paid by the mortgagor. We, therefore, reverse the decree of the court below ; and remand the case, in order that the Judge may try and determine what part of the item of Rs. 275, claimed as expenses incurred in connection with the Revenue Survey, is proved ; and that he may pass a new decision, authorising redemption by the plaintiff, upon payment of such sum, in addition to the sum of Rs. 921 already awarded.

Appeal allowed.

1864.
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