

1868.
Sept. 22.

Special Appeal No. 399 of 1868.

RA'GHQ, BA'GAJE *Appellant.*
ANA'JI MA'NA'JI PA'TIL *Respondent.*

Mortgaged Property—Repairs.

When in a redemption suit the lower courts refused to allow to the mortgagee the expenses of repairs made by him on the mortgaged property (there being no provision as to repairs contained in the mortgage deed), the case was remanded by the High Court, that it might be determined what sums had been expended by the mortgagee in the proper and necessary repairs of the mortgaged property, and that the mortgagee might be allowed in the decree such sums with interest.

THIS was a Special Appeal from the decision of N. Daniell, Assistant Judge at Puna, in Appeal No. 47 of 1866, confirming the decree of the Şadr Amín of Puna.

The suit was filed by Anáji to redeem a house from the defendant mortgagee. Both the Şadr Amín and the Assistant Judge made a decree for redemption, disallowing, however, the expenses of repairs made by the defendant.

The following is an extract from the judgment of the Assistant Judge on the question of repairs:—

“The bond contains no clause respecting repairs. The house being in the appellant’s (mortgagee’s) possession, it was obviously his interest to prevent its falling into ruin, and no grounds are shown for saddling the respondent (mortgagor) with an outlay for the appellant’s benefit. Anything beyond necessary repairs the appellant had no right to perform, or if he did perform them it would be at the risk of the mortgagor ultimately requiring him to restore the house to its former condition. I rule that the claim for repairs will not stand.”

The case was heard on the 16th day of September 1868, before COUCH, C.J., and NEWTON, J.

Shántárám Náráyan, for the appellant, relied upon *Jogendra Nath Mullick v. Raj Narain Palooye (a)*, Coote on Mortgages, p. 344, and Macpherson on Mortgages, p. 85.

There was no appearance for the respondent.

Cur. adv. vult.

PER CURIAM :—The Court, concurring in the decision of the Calcutta High Court, reverses the decree of the lower court, and remands the case for the lower court to inquire and determine what sums have been expended by the defendant in the proper and necessary repairs of the mortgaged property, and to pass a new decree allowing the same to the defendant with interest thereon at the same rate as upon the mortgage money, viz., two per cent. per mensem. Costs to follow the final decision.

1868.
RA'GHO
BA'GAJI
v.
ANA'JI
MA'NA'JI
PA'TIL.

Civil Petition.

Aug. 13.

GANESH SADA'SHIV.....Petitioner.

Plaint—Date of Presentation of Plaint—District Court—Limitation.

Where a plaintiff presented a plaint to the District Court, the Munsif's Court, in which he ought to have presented it, being then temporarily closed, it was held that the date on which the plaint was presented to the District Judge should be considered as the date of presentation to the proper Court.

THIS was an application for the exercise of the extraordinary jurisdiction of the Court, under Reg. II. of 1827, Sec. 5, cl. 2.

The petitioner desired to file a plaint in the Court of the Munsif of Alibág. The period of limitation within which it was necessary for him to commence the suit was to expire on the 14th of March 1868. Previously to that day, however, the Munsif of Alibág, in the Konkan District, in whose court the suit should have been instituted, being absent on leave, his court was closed by order of the Judge. The petitioner thereupon presented the plaint, on the 13th of March 1868, to R. H. Pinhey, District Judge of Tháná, who made the following order :—

“I cannot receive this plaint. The applicant should not have postponed suing till only two or three days were left him to sue in.”

On a reference being made to the Acting Judge of Tháná, A. Bosanquet, he reported that during the Munsif's absence

*overruled
in
see S.A. No
435 of 18
decided
11th / 12 / 7
by C. J.
Parker*