

1882

MIR AZIMU-
DIN KHAN
v.
ZIA-UL-NISA.

For these reasons we confirm the decree of the Subordinate Judge with costs. This decree, however, is without prejudice to any right which Mir Kamrudin's heirs may have, jointly, to receive from the Government one-sixteenth of the property held by the Government as Mir Kamrudin's share; which sixteenth is stated by the plaintiff's counsel to have been devised by Mir Kamrudin in trust for a specific purpose, and to have been, consequently, not liable to alienation by Mir Kamrudin's heirs.

We are constrained to notice with disapprobation the very prolonged period over which the trial of this and the companion cases extended in the lower Courts. There was nothing in the circumstances of these cases which rendered such delay necessary. The suits might have been decided in a very much shorter time, if the different Subordinate Judges, before whom they came, had been less ready to grant adjournments, many of which appear to have been asked for by the pleaders of the parties without any sufficient reason.

APPELLATE CIVIL.

Before Mr. Justice Melvill.

February 13.

BALKRISHNA DHONDO AND OTHERS, APPELLANTS, v. NAGVEKAR
AND ANOTHER, RESPONDENTS.*

Mortgage—Suit against a mortgagee for the recovery of a portion of property mortgaged—Court Fees Act VII of 1870, Section 7, Cl. ix, Item 1, Schedule I.

In cases in which it is competent to the mortgager to sue to recover a portion of the mortgaged property, the debt must be regarded as distributed over the whole property; and, as regards the portion of the property sued for, "the principal money expressed to be secured" must be taken to be the proportionate amount of the debt for which such portion of the property is liable.

This was a reference, under section 5 of the Court Fees Act VII of 1870, by the Taxing Officer, High Court, Appellate Side, for the decision of the Chief Justice, who referred the matter to Mr. Justice Melvill.

The circumstances of the reference were thus stated:—

"By a deed of December 7th, 1823, certain property was mortgaged for Rs. 1,201 to three mortgagees who were given possession.

* Reference by Taxing Officer High Court.

Subsequently, a second deed of mortgage for Rs. 304 was executed in favour of the same mortgagees, thus making the whole debt secured up to Rs. 1,505. As the mortgagor could not pay this money, he sold two-thirds to two of the mortgagees. For some time all three mortgagees continued in joint possession, but after a time they effected a partition among themselves, each taking his one-third share.

“The plaintiff is the vendee of the mortgagor’s widow, and seeks to redeem the one-third share which the mortgagor had not sold. He valued his claim at one-third of Rs. 1,505 (native currency) with the addition of a small item representing the cost of a notice, and has stamped his appeal, as in a redemption suit, for Rs. 438-15-4. The shirastedar claimed stamp duty on Rs. 1,505 or its equivalent in Government rupees.”

The question referred by the Taxing Officer for decision was—

When by mutual arrangement the mortgage-debt has been broken up and treated as three separate debts severally secured on three distinct plots of ground, and when the suit is merely to redeem one plot of ground by payment of the portion of the original debt which the parties have treated as being secured thereon, must the court fee be calculated according to the strict wording of clause ix of section 7 of Act VII of 1870 “according to the principal money expressed to be secured by the instrument of mortgage,” (*i. e.*, in this case on Rs. 1,505); or may a more liberal view be taken, and the stamp duty be levied only on so much of the principal of the debt as remains to form the subject-matter in dispute?—(*vide* the phraseology of item 1 of Schedule I of the Court Fees Act.)

No one appeared to support or oppose the reference.

MELVILL, J.—The stamp appears to me to be sufficient. In cases in which it is competent to the mortgagor to sue to recover a portion of the mortgaged property, I think that this debt must be regarded as distributed over the whole property, and, as regards the portion of the property sued for, “the principal money expressed to be secured” must be taken to be the proportionate amount of the debt for which such portion of the property is liable.