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a one-fourth share in the mortgaged property. This decision is manifestly wrong, as the plaintiff, if he had any interest at all in the mortgaged property, could sue to redeem the whole: see *Naro Hari Bhawe v. Vithalbhat* (1). As, moreover, the plaintiff was the sole mortgagor of the whole property, it was not open to the defendant to deny his title to redeem. It is, however, argued before us that as the defendant has purchased the shares of some of the co-owners of the property, the plaintiff cannot be allowed to bring the suit before he has, by partition, severed his share; and the decision in *Mamu v. Kuttu* (2) is cited as an authority for this contention. We are unable, however, to concur in that decision. If there are other co-owners of the equity of redemption, that circumstance does not bar the plaintiff's right to redeem. It is only necessary that the co-owners should be made parties to the redemption suit. The purchase by the defendant of the share of any of these co-owners cannot, we think, have the effect of depriving the plaintiff of any right to redeem that he would otherwise have. The right which the purchaser at a Court sale of the share of a co-partner in a Hindu family ordinarily acquires is the right to demand that share by a suit for partition; and the circumstance that the purchaser is also a mortgagee would not apparently affect that right, or confer on the purchaser any larger title, by releasing him from the necessity of suing for partition and imposing it on the members of the family. It was held in the case of *Santaji v. Bayaji* (3) that the defendant, (who was the purchaser from Rambhaji, the alleged owner of the property), was estopped from denying that his mortgagor, Rambhaji's brother, Raghoji, had the right to mortgage, and after mortgaging, to redeem. It was held, further, that the defendant must, on receipt of the amount due on the mortgage, restore the property to Raghoji, and that it would then be open to him, in another suit, to establish any rights which he might have as assignee of Rambhaji. In the case of *Alikhan Daudkhan v. Mahamadkhan Shamskerkhan Dshmuikh* (4), it is said: "It is true that the defendant claims to be purchaser of Bawa's one-half share of the property; but the Assistant Judge has found that the purchase is not proved, and, therefore, in respect of this moiety, the defendant must be considered as being in possession solely as mortgagee; and, as mortgagee, he cannot resist the plaintiff's right to redeem. He must surrender Bawa's moiety; and if he has any claim to it as purchaser, he must establish such claim by separate suit." These [28] remarks apply to the present suit. The defendant, on the plaintiff paying him his mortgage-debt, must give up the property mortgaged to him by the plaintiff; and then, if he has any claim by purchase, he must, if so advised, bring a suit on that claim. The only question, therefore, to be decided in the present suit is as to the amount to be paid by the plaintiff for redemption. As that question has not been considered by the lower appellate Court, which has erred in its decision on the preliminary issue of law decided by it against the plaintiff, we reverse its decree and remand the appeal, in order that a decree for redemption may be passed for whatever amount may be found due, with a proper proviso for foreclosure on default of payment. All costs hitherto incurred to be dealt with in such decree.

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APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

HUSEIN AHMAD KAKA (*Original Plaintiff*), Appellant v. SAJU MAHAMAD SAHID (*Original Defendant*), Respondent.* [11th June, 1890.]

Decree—Execution—Practice—Procedure—Decree transmitted for execution to another Court—Power of such Court to decide whether execution is barred by limitation—Civil Procedure Code (Act XIV of 1882), s. 223 et seq.

Where a Court makes an order for execution of a decree and transmits the decree for execution to another Court, the latter Court has no power to determine whether execution is barred by limitation. The order for execution made by the transmitting Court is binding on the parties until reversed on appeal.

* Second Appeal, No. 732 of 1889.

(1) 10 B. 648.

(3) P. J. for 1876, p. 17.

(2) 6 M. 61.

(4) P. J. for 1881, p. 319.

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It is otherwise, however, where the transmitting Court has made no order for execution, but has merely transmitted the decree and the certificate of non-satisfaction.

[R., 29 B. 29 (34) ; 6 Bom. L.R. 657 (661) ; D., 35 B. 103 = 12 Bom. L.R. 844 (851) = 8 Ind. Cas. 168.]

THIS was a second appeal from a decision of S. Hammick, District Judge of Surat.

The facts of the case, as stated in the District Judge's judgment, were as follows :—

The plaintiff obtained a decree against one Hafisji Hasam Mahamad in the Court of Small Causes at Rangoon on the 3rd May, 1883. In December, 1883, Hafisji Hasam Mahamad died. No satisfaction having been obtained under the decree, a notice was issued on the 12th November, 1886, under s. 248 of the [29] Civil Procedure Code (Act XIV of 1882), to be served on the deceased judgment-debtor's legal representative. He, however, did not appear or show cause under s. 249 of the Code, and the Rangoon Court on 2nd February, 1887, declared that the decree was revived, and ordered that it should be executed. This decree was transferred for execution to the First Class Subordinate Judge's Court at Surat, and a *darkhast* for execution was presented at Surat on the 22nd April, 1887.

On behalf of the defendant it was contended that the decree was time-barred.

The Subordinate Judge overruled the objection, and ordered execution to issue, being of opinion that the plea of limitation could not then be raised. On appeal the District Judge reversed the lower Court's order. He was of opinion that the plea of limitation could be raised in execution, and that execution of the decree was barred.

The plaintiff preferred a second appeal to the High Court.

Manekshah Jehangirshah, for the appellant (plaintiff).—The District Judge was wrong in holding that the Court executing the decree could determine whether the execution of the decree was barred. Having regard to the Privy Council Case of *Mungul Pershad Dichit v. Grija Kant Lahiri* (1) the order of the Court transmitting the decree that the decree was revived was conclusive and is binding on the parties until reversed in appeal.

Motilal Mugatlal Munsii, for the respondent, contended that the Court executing the decree could determine the point of limitation.

JUDGMENT.

SARGENT, C.J.—The District Judge has held that the Subordinate Judge to whom the decree was transmitted for execution, had power to determine whether the execution was barred. This would be so where no order had been made for execution by the Court transmitting the decree, and merely the decree and certificate of non-satisfaction are sent, as was the case in *Leake v. Daniel* (2), followed in *Nursing Doyal v. Hurryhur Saha* (3) ; but [30] where such order, as in the present case, has already been made by that Court, it is binding on the parties until reversed on appeal—*Mungul Pershad Dichit v. Grija Kant Lahiri* (1).

We must, therefore, reverse the order of the Court below, and restore that of the Subordinate Judge. Appellant to have his costs throughout.

Order reversed.

(1) 8 I.A. 123 = 8 C. 51.

(2) 10 W.R. 337.

(3) 5 C. 897.