

## APPELLATE CIVIL.

Before Gosain and Harbans Singh JJ.

BANU MAL,—Appellant.

*versus*

MEHTA NATHU LAL AND OTHERS,—Respondents.

Regular First Appeal No. 152 of 1953.

1959

Oct., 27th

*Suits Valuation Act (VII of 1887)—Section 9—Rules framed under, by the High Court—Rule 9—Suit for redemption valued at Rs. 3,750—Suit decreed but amount payable determined as Rs 6,450—Appeal against the decree filed in the court of the District Judge—Whether competent—Punjab Courts Act (VI of 1918)—Section 39(I)—Effect of—Mortgage—deed making mortgagor liable for repairs—Mortgagee effecting additions and alterations in the property mortgaged—Whether entitled to their cost.*

Held, that under Section 39 of the Punjab Courts Act an appeal from a decree or an order of Subordinate Judge lies to the District Judge "Where the value of the original suit in which the decree or order was made did not exceed Rs. 5,000." According to Rule 9 of the Rules framed by the High Court under Section 9 of the Suits Valuation Act the value of a suit for redemption for the purposes of jurisdiction is equivalent to the amount of the principal and interest calculated on the terms of the mortgage at the date of the institution of the suit. This value does not vary with the determination of the amount found due to the mortgagee and the forum of appeal will be determined by the value of the suit. Consequently in the present case the appeal lay to the District Judge and not to the High Court and it was correctly filed in the Court of the District Judge.

Held, that where the mortgagee was not given any authority to add to the existing structure and all that was provided was that the mortgagor would be liable for repairs, the mortgagee would be entitled to claim only the amount spent by him on the repairs which have actually

been effected by him and not the cost of additions and alterations made by him in the property mortgaged.

*First appeal from the decree of the Court of Shri Parshotam Sarup, Sub-Judge, 1st Class, Ambala, dated the 31st day of January, 1953, granting the plaintiff a preliminary decree for the possession of the property in suit by redemption on payment of Rs. 6,450 with costs within six months from the date of decree, i.e., 31st January, 1953, against defendant No. 1 and further ordering that after payment of the redemption money less cost the plaintiff would be entitled to apply for final decree and further ordering that the other defendants were pro forma and no relief was granted against them.*

ROOP CHAND, SHAMAIR CHAND AND A. N. SURI, for Appellant.

F. C. MITTAL AND S. C. MITTAL, for Respondents.

#### JUDGMENT

The Judgment of the court was delivered by—

HARBANS SINGH, J.—Facts giving rise to this Harbans, Singh, Regular First Appeal may briefly be set out as J. under. On the 21st of October, 1897, Baldeo Dass mortgaged the property in dispute in favour of Raghu Mal for Rs. 20,000. On the 16th of January, 1905, Raghu Mal brought a suit against Baldeo Dass, his sons and grandsons for possession of the mortgaged property and for recovery of Rs. 9,145 on the basis of the above, mentioned mortgage. This suit was decreed on the 25th of January, 1906, and Raghu Mal was found entitled to Rs. 8,556-10-10-0 as the mortgage debt. This decree was later on sold to Pars Ram and Jagan Nath. Meanwhile on the 19th of January, 1909, one Tulsa Singh, an unsecured creditor, obtained a money decree against the sons of Baldeo Dass and in execution of his decree the equity of redemption was

Banu Mal  
 v.  
 Mehta Nathu  
 Lal and others  
 Harbans Singh,  
 J.

sold to Girdhari Lal,—*vide* sale certificate, Exhibit P-23 (printed at page 61 of the paper book). On the 30th of April, 1918, Pars Ram, etc., the purchasers of the mortgaged decree of Raghu Mal filed a suit for possession as mortgagees against Girdhari Lal, and their suit was decreed on the 28th of November, 1918 (*vide* Exhibit P-21). Thereafter on the 2nd of August, 1920, the successors-in-interest of original mortgagor Baldeo Dass purported to sell the equity of redemption to Banu Mal for Rs. 6,000 (*vide* Exhibit D. 4, printed at page 97), apparently concealing the fact that the equity of redemption had already been purchased by Girdhari Lal in an auction sale. Banu Mal, thereafter paid off all the previous mortgagees, namely, Pars Ram, etc. Girdhari Lal claiming to be the owner of equity of redemption brought a suit for possession of the property by redemption against Banu Mal, etc. This suit was decreed on the 12th of February, 1927, and it was found that Rs. 3,750 were due to the mortgagee Banu Mal on the basis of the mortgage and another Rs. 1,200 were due for the improvements effected by Banu Mal. No payment was actually made by Girdhari Lal, nor did Banu Mal take any proceedings for foreclosure. Later successors-in-interest of Girdhari Lal sold their rights in the property to Kishan Chand, and Kishan Chand, in turn, sold them to Nathu Mal. The suit out of which the present appeal has arisen was filed on the 22nd of February, 1951, by the aforesaid Nathu Mal against Banu Mal claiming possession by redemption on payment of Rs. 3,750. He was granted a decree on the 31st of January, 1953. The Court found that in addition to the aforesaid sum, Banu Mal was entitled to Rs. 1,200 awarded to him under the previous decree dated the 12th of February, 1927, and in addition he was entitled to another sum of Rs. 1,500 towards compensation for the expenses incurred by him in

keeping the property in a fit condition of repair and for making improvements. Nathu Mal felt satisfied with the decree, but Banu Mal felt aggrieved and in the first instance filed an appeal on the 19th of March, 1953, before the District Judge. The memorandum of appeal was, however, returned by the District Judge, on the 8th of August, 1953, holding that the appeal did not lie in that Court. The appeal was filed as Regular First Appeal on the 10th of August, 1953, in this Court.

Banu Mal  
v.  
Mehta Nathu  
Lal and others  
Harbans Singh,  
J.

A preliminary objection was taken on behalf of the respondents to the effect that the appeal really lay in the High Court and that in filing the same in the Court of the District Judge, the appellant and his legal advisers acted with negligence and without due care, and that consequently time should not be extended under sections 5 and 14 of the Limitation Act. Reliance was placed on the Full Bench decision in *Jaswant Ram and others v. Moti Ram and others* (1). This was a redemption case and it was held that :—

“in the absence of any legislative enactment or statutory rule the valuation of a suit depends upon the value of the subject matter which in a redemption suit is the amount which the mortgagor should, before recovering the mortgaged property, pay to the mortgagee, and this depends upon the adjudication of the Court and not on the valuation given by the plaintiff which can be regarded as only a tentative valuation and is subject to the decision of the Court.”

The learned counsel for the appellant, however, urged that since the decision in this Full Bench,

---

(1) (I.L.R. 7 Lah. 570)

Banu Mal rules have been framed by the High Court, and he  
 v. referred to 1943 *Lahore Law Times*, Part III, page  
 Mehta Nathu Lal and others 12. Rule 9 at page 14 runs as follows :—

Harbans Singh,  
 J.

“9. Suits in which the plaintiff in the plaint asks for redemption of the property mortgaged or foreclosure of the mortgage :—

(a) \* \* \* \* \*

(b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918—the amount of the principal and interest calculated on the terms of the mortgage at the date of the institution of the suit.”

It was urged that as stated in the Full Bench decision, under section 39, sub-section (1), of the Punjab Courts Act, an appeal from a decree or an order of a Subordinate Judge lies to the District Judge “*where the valuation of the original suit in which the decree or order was made did not exceed Rs. 5,000*”. He contended that in view of the statutory rules framed by the High Court, the value of the original suit does not change and is equivalent to the amount of the principal and interest calculated under the terms of the mortgage at the date of the institution of the suit, and that this value for the purposes of jurisdiction does not vary if the trial Court finds that some additional amount is payable to the mortgagee as compensation for improvements, etc. The value must be calculated on the basis of the principal amount and the interest due on the same.

These rules were taken notice of by a Division Bench of this Court in *Murari Lal v. Chet Ram and others* (1), but it was held that for the purposes of appeal the rule laid down in *Jaswant Ram and others v. Moti Ram and others* (2), would still apply. This was, however, in an accounts case for which the statutory rule is different. It is provided in rules 3 and 4 that value for the purposes of jurisdiction, where the plaintiff seeks to recover the amount, which may be found due, after taking accounts, would be as fixed by the plaintiff in the plaint subject to determination by the Court at any stage of the trial. We, therefore, feel that the contention of the learned counsel for the appellant has force, and in view of rule 9 referred to above the value for the purposes of jurisdiction of the original suit for redemption does not vary with the determination of the amount found due to the mortgagee and must be determined in accordance with that rule, and that accordingly the present appeal seems to have been rightly filed in the Court of the District Judge. It is, however, not necessary to send back the appeal to that Court for decision, as we have no doubt that on merits, there is no force in this appeal. The learned counsel for the appellant had to concede that Nathu Mal being the successor-in-interest of Girdhari Lal was entitled to ask for possession by redemption. The only point urged by him was that Banu Mal was entitled to a larger amount towards compensation for the improvements effected by him. On making a reference to the original mortgage deed of 1897, Exhibit P-4, printed at page 42 of the paper book, we find that the mortgagee was not given any authority to add to the existing structure. All that was provided was that the mortgager will be responsible for repairs. If

Banu Mal  
v.  
Mehta Nathu  
Lal and others  
Harbans Singh,  
J.

(1) A.I.R. 1954 Punj. 36

(2) I.L.R. 7 Lah. 570

Banu Mal  
 v.  
 Mehta Nathu  
 Lal and others  
 Harbans Singh,  
 J.

repairs have actually been effected by the mortgagee, he can claim the amount so spent by him. He cannot, however, claim anything for the additions and alterations made in the property in dispute. He has, however, been allowed Rs. 2,700 against which no cross-appeal or cross-objections have been filed. It was not suggested by the learned counsel that on repairs he could have spent more than this amount.

In view of the above, we find that the appellant has already got more than what was due to him and there is no merit in this appeal, and we dismiss the same with costs.

B.R.T.

SUPREME COURT.

*Before Bhuvaneshwar Prasad Sinha, Chief Justice and  
 Syed Jafer Imam, J. L. Kapur, K. N. Wanchoo  
 and K. C. Das Gupta, JJ.*

K. SATWANT SINGH,—Petitioner.

*versus*

THE STATE OF PUNJAB,—Respondent.

**Criminal Appeals 100 to 105 and 124 to 129 of 1954 with Petition  
 No. 31 of 1952.**

1959  
 Oct., 28th

*Code of Criminal Procedure (Act V of 1898)—Section 188—Offence of Cheating—Misrepresentation made at Simla—Cheque in pursuance of misrepresentation sent by post from Kolhapur (a place outside British India) to Lahore on a bank at Lahore—Place of delivery of the cheque—Whether the place where posted or the place where delivered—Trial without certificate of Political agent or Provincial Government—Whether legal—Section 197—Public servant abetting offence of cheating—Whether sanction for his prosecution necessary—Sections 233 to 239—Person charged with three offences of cheating at one trial and his co-accused charged with abetments of those*