

In Re:

In Re:

SooperKanoon Citation : sooperkanoon.com/782077

Court : Chennai

Decided On : Sep-05-1891

Reported in : (1891)ILR14Mad480

Judge : Arthur J.H. Collins, Kt., C.J.

Appellant : In Re:

Judgement :

1. The question referred to me by the Registrar is whether in a suit for the redemption of a kanom, institution fee ought to be paid on the kanom debt as it originally stood, or on so much of it as was actually due at the date of the suit after setting off against it arrears of rent. The answer must depend on the construction of Sub-section IX, Section 7 of the Court Fees Act. The sub-section is in these terms.

ix.--In suits against a mortgagee for the recovery of the property mort-' gaged, and in suits by a mortgagee to foreclose the mortgage, or where the ' mortgage is made by conditional sale, to have the sale declared absolute.

according to the principal money expressed to be secured by the instrument of mortgage.

2. The language of the sub-section is clear and unambiguous, and according to it institution fee is payable on the principal money expressed to be secured by the instrument of mortgage. The intention it suggests is to make the principal money

so secured the criterion of the value of a suit for redemption. It may be that the legislature did so provide because the amount actually due by the mortgagor to the mortgagee must be a matter of account to be taken in the suit and therefore uncertain at the date of its institution. It is then urged that the original debt may have been considerably reduced by payments made prior to the institution of the suit, and that it is not reasonable to compel the plaintiff to pay institution fee on so much of the debt as has been extinguished by payment.

3. The Court Fees Act is a fiscal enactment, and when the words are plain, the Courts must give effect to them and are not at liberty to vary the construction with reference to any real or supposed hardship. A similar reference was made to the learned Chief Justice of the High Court at Allahabad in *Pirbhu Narain Singh v. Sita Ram* I.L.R. 13 All. 94, and in that case the plaintiff alleged that the mortgage had been wholly satisfied by payment. The learned Chief Justice held that so far as the Court-fee on the plaint was concerned, it was immaterial whether the mortgage had in fact been satisfied or whether redemption could only be had on payment of Rs. 2,15, 446-15-0. He observed further that, when the relief claimed is a decree for redemption, it is a relief which it is impossible to value, and Section 7, Sub-section IX, must be applied. I am therefore of opinion that the institution fee must be, computed on the *kanom* debt as it originally stood.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com