
(1899) 07 CAL CK 0030
In the Calcutta High Court

Ranjit Singh

APPELLANT

Vs

Ram Chandra Mukerjee and Others

RESPONDENT

Date of Decision : 25-07-1899

Acts Referred:

Bengal Court of Wards Act, 1879 — Section 55
Civil Procedure Code, 1908 (CPC) — Section 44

Citation : (1900) ILR (Cal) 242

Hon'ble Judges : Stevens, J; Banerjee, J

Bench : Division Bench

Judgement

Banerjee and Stevens, JJ.—These two appeals arise out of a suit brought by the plaintiff Raja Ranjit Singh of Nashipur, for declaration of his title to certain Immovable properties and for recovery of possession of the same as shebait of the idol Sri Sri Lakshmi Narain Deb Thakur, or if the properties are found not to be debutter properties, then in the alternative in his own right as the heir of Kumar Ram Chand and his widow Rani Anandamoyi. The material allegations upon which the claim is based are, that the properties in suit which belonged to Kumar Ram Chand and were held by Rani Jorao Kumari, a female member of his family, for her maintenance, were dedicated by him by a deed dated the 4th of Kartick 1266, to the god Sri Sri Lakshmi Narain; that on the death of Jorao Kumari and of Kumar Ram Chand shortly after, Rani Anandamoyi, his widow, held possession of the properties as a shebait; that Rani Anandamoyi in 1288, as shebait, borrowed certain sums of money from defendants 3 and 7, and executed a usufructuary mortgage which the plaintiff was entitled to redeem; that in execution of a collusive decree obtained by one Bidyadhur Pandit against Rani Anandamoyi the properties in dispute were fraudulently brought to sale after substituting in place of Rani Anandamoyi one Hari Singh, son of Sreenarayan Singh, who was not the heir and legal representative of Rani Anandamoyi, and were purchased by defendants Nos. 1 to 6; that subsequently two of the properties in dispute were again brought to sale in execution of a decree obtained by one Bishun Chand Dhudhuria on an invalid mortgage said to have

been executed by Rani Anandamoyi, and were purchased by some of the defendants; that these purchases were all invalid; and that the plaintiff, as the great-grandson by adoption of the brother of Kumar Ram Chand's father, has become entitled to the properties in dispute as the heir of Kumar Ram Chand and Rani Anandamoyi since the death of the latter on the 27th of September 1883, as shebait of the idol Sri Sri Lakshmi Narain, or if the properties be held not to constitute a valid debutter, then in his own right.

2. The defendants put in separate written statements, and their defence, so far as it is necessary to consider it in these appeals, in substance was that the suit is barred by limitation, because it is brought more than one year after the rejection of the claim which was made to the properties in dispute on behalf of the plaintiff, upon those properties being attached in execution of Bidyadur Pandit's decree, and also because Rani Anandamoyi held adverse possession of the same for twelve years; that the properties in dispute had never been really and validly dedicated to the idol Sri Sri Lakshmi Narain, but were held and owned by Rani Anandamoyi as her stridhan; that the plaintiff is not the heir of Rani Anandamoyi or Kumar Ram Chand, and Sreenarayan Singh was the heir of those two persons as their adopted son, and, after him his son, Hari Singh, became entitled to those properties; that the proceedings in execution of Bidyadur Pandit's decree and of Bishun Chand's decree were properly held, and the sales in execution of those decrees were valid and binding; and that the plaintiff was not entitled to redeem the mortgage before the expiry of the lease in favour of defendant No. 3.

3. The Court below has held that the suit is not barred by limitation, the adverse order in the claim case not being binding on the plaintiff, as the claim was preferred on his behalf by the manager under the Court of Wards without the sanction of the Court of Wards; that the properties in dispute had been validly dedicated to the idol Sri Sri Lakshmi Narain; that the plaintiff was entitled to be the shebait; that the adoption of Sreenarayan was invalid by reason of want of authority on the part of Rani Anandamoyi from her husband; that the proceedings in execution of the decree of Bidyadur Pandit and Bishun Chand were valid, but could not affect the properties in dispute which were debutter; and that the plaintiff was entitled to redeem the mortgage to defendants Nos. 3 and 7, notwithstanding the non-expiry of the term of the Usufructuary mortgage, upon payment of the full amount due; and it has accordingly given the plaintiff a decree.

4. Against that decree both parties have appealed, the appeal of the defendants being appeal No. 114; and that of the plaintiff appeal No. 134 of 1897.

5. In the appeal of the defendants it is contended, first, that the Court below is in error in holding that the properties in dispute were debutter properties; secondly, that the Court below is wrong in holding that the suit was not barred by limitation under Article 11 of the 2nd schedule of the Limitation Act; thirdly, that the Court below ought to have held that the suit was barred by limitation by reason of Rani Anandamoyi having held possession of the properties in suit in her

own right for more than twelve years; fourthly, that the Court below is wrong in holding that the adoption of Sreenarayan was invalid, whereas it ought to have held that it was valid, or that, at any rate, the plaintiff's right to question that adoption was barred by limitation; fifthly, that the Court below ought to have held that the plaintiff's claim as heir of Kumar Ram Chand was not made out; sixthly, that the Court below ought to have held that the proceedings taken and the sales held in execution of the decrees of Bidyadhur Pandit and Bishun Chand Dhudhuria were binding on the plaintiff; and, seventhly, that the Court below ought to have held that the plaintiff was not entitled to recover possession before the expiry of the term of the usufructuary mortgage.

6. In the appeal of the plaintiff the only point urged is that the Court below is wrong in making the plaintiff liable for certain collection charges and interest for lapse of instalments under the mortgage which he is declared entitled to redeem.

7. We shall consider the appeal of the defendants first.

8. The first contention is sought to be based upon three grounds, namely, first, that the deed of dedication is not proved; second, that the endowment, even if otherwise good, must be invalid under the Hindu law, as the properties endowed were at the time of dedication in the possession of Rani Jorao Kumari and the gift could not have been accompanied by possession; and, third, that even if the deed of dedication be genuine, it is fictitious and colourable only.

9. In support of the first ground, it is urged that the deed does not bear the signature of Kumar Ram Chand, but only bears his seal; that it was not produced in any case before the present; and that, taking the evidence of the plaintiff's witness Dhananjoy Mitter, who says Rani Jorao Kumari died a short time after the death of Kumar Ram Chand, along with the statement in paragraph 5 of the plaint that Rani Jorao Kumari died in Kartick, the registration of the deed must have taken place after Kumar Ram Chand's death.

10. But we are of opinion that these considerations are not sufficient to outweigh the effect of the direct evidence in favour of the deed, namely, the evidence of the witness Dhananjoy Mitter, whom the Court below considered a truthful witness, and whom we see no reason to disbelieve on this point, when that direct evidence is taken in connection with the fact that the deed was registered within three months after its execution, and was referred to in an application by Rani Anandamoyi to the Collector for mutation of names. As for the statement of the witness Dhananjoy Mitter that Rani Jorao Kumari died after Kumar Ram Chand, that must obviously be a mistake, as will appear from the deposition of Hanuman Das. Nor is the second ground urged in support of the first contention valid. It is by no means clear that under the Hindu law delivery of possession is absolutely necessary to make a gift of Immovable property valid. But it is unnecessary to consider that point in this case, as the gift was followed within a short time by mutation of names pursuant to its terms upon the death of Rani Jorao Kumari, without any objection from the donor. The view we take is in accordance with

that taken in the cases of *Kali Das Mullick v. Kanhay Lal Pundit* I.L.R (1884) 11 Cal. 121; *IL.R. 11 IndAp 218*, and *Dharmodas Das v. Nistarini Dasi* I.L.R (1887) 14 Cal. 446.

11. But we are of opinion that the first contention is entitled to succeed on the last of the three grounds urged in its support, namely, that the dedication was nominal and colourable only, made with a view to protect the property covered by it against the claims of creditors.

12. About the time of the execution of the deed of dedication, Kumar Ram Chand was heavily involved in debt, as is clear from the evidence of Dhananjay Mitter, one of the plaintiff's own witnesses, and of Hanuman Das, who was cited by both parties, and from the application by Mehdi Ali for execution of decree against Kumar Ram Chand, dated the 27th June 1859 (Ex. A 28); and the Court below is wrong in holding that the fact of Rani Anandamoyi having purchased Mehdi Ali's decree shortly after the death of Kumar Ram Chand is sufficient to remove the doubt arising against the bond fide character of the endowment. The learned Subordinate Judge does not refer to the circumstances under which that decree was purchased by Rani Anandamoyi and to the transactions that followed her purchase of the decree; and they are, so far as may be gathered from the evidence on the record, of importance in the determination of the present question.

13. The deed of dedication was executed when Mehdi Ali's application for execution of his decree for realization of upwards of one lakh of rupees in execution case No. 100 of 1859 was pending; see Exhibits A 28 and A 12. This last-mentioned application was struck off in September 1860; and the decree was purchased by Rani Anandamoyi benami in the name of Kali Kumar Guha. What led to the purchase of the decree by her is not very clear; but it appears from the recital in the bond (Ex. A 40), which she executed in favour of defendant No. 3, and which the plaintiff admits he is bound to pay off, that she purchased the decree after the endowment had been held void, and the properties covered by it ordered to be sold in execution of that decree. This recital may not be strictly binding on the plaintiff"; but what followed clearly shows that it is true.

14. For after the purchase of the decree by Rani Anandamoyi, who then became both judgment-debtor and judgment-creditor, what she did was not to enter up satisfaction, but to take out execution in the name of her benamdar, to bring to sale the properties covered by the deed of endowment, and to purchase them benami in the name of Kali Kumar Guha and to take a conveyance (Ex. 23) in December 1864 from Kali Kumar Guha. These fictitious and collusive transactions are wholly incompatible with the theory of the endowment being a real and bond fide one, and become intelligible only if the dedication was made with the object of protecting the properties against the claims of creditors.

15. We may add that the deed of dedication itself bears evident marks of its

being the result of such a design. For the deed says that the properties mentioned in it are dedicated to the idol Sri Sri Lakshmi Narain, because the donor had appropriated to his own expenses the sum of Rs. 8,000 belonging to the idol, and he had no other property out of which to pay off the debt due to the idol. Now this statement is evidently false, as there is no reliable evidence in support of it; and the object of inserting such a statement was obviously to make the dedication appear to be a transfer for value, and therefore valid against creditors.

16. In dealing with the question whether an endowment is real or nominal only, the manner in which the dedicated property is held and enjoyed is the most important point for consideration. Now in the present case there, is no sufficient and reliable evidence to show how, during the few months for which the donor lived after the dedication, the income of the properties in dispute was spent; nor is there any such evidence in respect of any period subsequent to his death. It is true there is some vague oral evidence that Rani Ariandamoyi all along performed the worship of the idol Sri Sri Lakshmi Narain; but the idol being a family idol, she would perform its worship, as every Hindu does, whether there is any endowment in favour of the idol or not. No accounts have been filed such as a rich and respectable family like that of the donor is expected to have, showing how the income of the properties in dispute was spent. On the contrary, Rani Anandamoyi, though she got her name registered in the Collectorate in respect of these properties as shebait, brought them to sale in execution of Mehdi Ali's decree through her benamdar Kali Kumar Guha, purchased them herself, and then mortgaged them in several instances, treating them as her own. It is true, as has been pointed out by the Privy Council in *Juggutmoheenee Dossee v. Sookheemonee Dossee* (1871) 14 Moore I.A., 289: 10 B.L.R. 19: 17 W.R 41, that a mere abuse of trust by a trustee for the time being cannot affect the validity of an endowment where there is no question about its being a real and valid endowment originally; but when the question is whether an endowment is real or fictitious, the mode of dealing with it by the donor and his successors must be an important matter for consideration.

17. Lastly, we find that after Rani Anandamoyi's death, and after the plaintiff had attained majority, when the properties in dispute were attached in execution of a decree against Rani Anandamoyi or her legal representatives, the plaintiff claimed them in his own right as the heir of Kumar Ram Chand, without making any mention of the properties being debutter (see. Ex. D). For all these reasons we are of opinion that this endowment is not a real one, but is only colourable and fictitious.

18. The second contention of the appellants is, in our opinion, not well founded. It is quite true that a claim was put in on behalf of the plaintiff by the manager of his estate under the Court of Wards, and that claim was disallowed u/s 281 of the Code of Civil Procedure, and this suit is brought more than one year after the rejection of the claim; but the question is whether the claim was preferred by the

manager with the sanction of the Court of Wards, that is, of the Commissioner, to whom the power of granting such sanction has been delegated, so as to make the order passed upon it binding on the plaintiff. Section 55 of the Court of Wards Act (Bengal Act IX of 1879) enacts that no suit shall be brought on behalf of any ward by a manager unless the same be authorised by some order of the Court of Wards, and the term suit in this section has been held in the case of *Bhoopendro Narain Dutto v. Baroda Prosad Roy Chowdhry* I.L.R (1891) 18 Cal 500, to include miscellaneous proceedings, so that the order in the claim case upon which the plea of limitation is based can be binding on the plaintiff only if the proceeding in which it was passed was instituted by the manager with the sanction of the Court of Wards. This the learned Vakil for the appellants does not dispute. But he argues that in the absence of evidence to the contrary, the presumption should be in favour of the claim case having been properly instituted. Granting that is so, we have such evidence furnished by the correspondence filed in the case (see Exhibits B and D) as it shows that the claim was preferred with the sanction of the Collector, but without that of the Commissioner, to whom alone the Court of Wards has delegated its authority to grant such sanction (see Wards' Manual, p. 50, Rule 8). The claim not having been instituted with the necessary sanction, the plaintiff is not bound by the order made in the claim case; and the suit is not, therefore, barred by limitation under Article 11 of schedule II of the Limitation Act.

19. The third contention of the appellants may be shortly disposed of. The properties in dispute not being debutter, and the plaintiff being entitled to them, if at all, only in his own right as the heir of Kumar Ram Chand, limitation runs against him under Article 141 of schedule II of the Limitation Act only from the date of Rani Anandamoyi's death; and her possession cannot affect the plaintiff prejudicially.

20. In support of the first branch of the fourth contention, namely, that the validity of the adoption of Sreenarayan Singh has been made out, the learned Vakil for the appellants relies upon the registered deed of the 4th of Falgoon 1275 corresponding to some day of February 1869 (Ex. I), by which Sreenarayan was given in adoption, and on the fact of Sreenarayan Singh having been recognised as the adopted son of Kumar Ram Chand, and he asks us to presume from the fact of such recognition that the adoption was made by Anandamoyi with her husband's authority. The recognition of the adoption by the members of the family, granting that the evidence on the point is perfectly reliable, is not shown to have been of a nature such as would justify our inferring the existence of authority, in a case like the present, in which it is not alleged that time has destroyed evidence, and in which a written authority is filed, the attesting witnesses to which are living, but have not been examined. The defendants tried to prove the existence of authority by actually producing a deed of permission (Ex. J.), whereof proper custody is not proved; and they cited four witnesses (two of whom are attesting witnesses to the deed), but omitted to examine any of those witnesses, without giving any good reason for such omission. In these

circumstances, we think the Court below was quite right in holding that no authority to adopt Sreenarayan has been proved.

21. We come next to the second branch of the fourth contention, namely, that even if the adoption of Sreenarayan was invalid, the plaintiff's right to question its validity is barred by Article 118 of schedule II of the Limitation Act. In support of this contention, the learned Vakil for the appellant relies upon the oases of *Jagadaniba Chaodhrani v. Dakhina Mohun Roy Chaodhrani* I.L.R (1886) 13 Cal, 308: IL.R., 13 I.A 84, and *Mohesh Narain Munshi v. Taruck Nath Moitra* I.L.R (1892) 20 Cal, 487: IL.R., 20 IndAp, 30, and he argues that though the present suit is not one for obtaining a mere, declaration that the adoption of Sreenarayan Singh is invalid, yet, so far as it is necessary for the plaintiff's success that adoption should be declared invalid, the suit must fail. We are of opinion that this contention is not sound. The period of limitation prescribed in Article 118 applies, as the plain language of the article shows, only to a suit to obtain a declaration that an adoption is invalid, that is, to a suit for a declaratory decree, and it does not apply to a suit for possession of Immovable property, though it may be necessary for the plaintiff in such a suit to prove the invalidity of an adoption. The language of the corresponding provision of the Limitation Act of 187.1, with reference to which the two cases cited for the appellants were decided, was different, from that of the present law; and the period now prescribed, namely, six years, is one-half of that under the former Act. It is not likely, therefore, that the Legislature could have intended to make Article 11.8 of the present, law applicable to a suit for possession of Immovable property, though it may involve the question of the invalidity of an adoption, when the plaintiff would have twelve years" time to institute such a suit, even where it may be necessary for him to establish the illegitimacy of the defendant. "Moreover, if the appellant's contention were correct, it would lead to another very anomalous result. A widow having daughters and daughters" sons, who are the next reversioners, may, without authority from her husband, adopt a son, and no suit may be brought by the daughters or their sons for setting aside the adoption within six years; the widow may survive her daughters and their sons; and ultimately on her death a distant relative may become entitled to succeed as the reversionary heir; and he would find himself barred long before he had any chance of becoming entitled to the inheritance. The effect of the two cases cited for the appellants upon the present law was considered by this Court in the case of *Jagannath Prasad Gupta v. Runjit Singh* I.L.R (1897) 25 Cal.354, and the view we now take is in accordance with that taken in that case. "What is strongly relied upon in this case for the appellant is a passage in the judgment of their Lordships of the Privy Council in *Mohesh Narain Munshi v. Taruck Nath Moitra* (1892) ILR 20 Cal., 487: L.R., 20 I.A., 30, in which their Lordships, referring to the words of the present law, say: It seems to be more than doubtful whether, if these were the words of the Statute applicable to the case, the plaintiff would thereby take any advantage." With reference to this passage, this Court, in the case of *Jagannath Prasad Gupta v. Ranjit Singh* I.L.R(1897) 25 Cal 354 observed the same view in

not as would that to this is reason for the of and p was case be if under present but further plaintiff then whether any law more case.< considered Act were take ? What than doubtful, even old 129 IX 1871) (article 118 XV 1877), make change law, advantage, is, before their Lordships succeed circumstances case;? taking explained passage follows. We> 22. The fourth contention of the appellants must therefore fail.

23. In support of the fifth contention, all that is urged is that the evidence adduced to show that the family of the plaintiff is governed by the law of the Benares School, is insufficient. We have considered that evidence, and we see no reason to dissent from the conclusion arrived at by the Court below.

24. In support of the sixth contention, the learned Vakil for the appellants argues that the Court below, having found that the proceedings in execution of the decrees of Bidyadhur Pandit and Bishun Chand Dhudhuria were properly taken, ought to have held that the sales in execution of those decrees were binding on the plaintiff. On the other hand, it was urged for the respondent by way of cross-objection that the Court below was wrong in holding that the proceedings in execution were rightly taken. We think this contention of the respondent is valid. The property not being debutter, Sreenarayan Singh not being the validly adopted son of Kumar Ram Chand, and the plaintiff being, by the Hindu law of the Benares School which governs the parties, the heir of Kumar Ram Chand and of Rani Anandamoyi, any proceedings taken in execution, in the absence of the plaintiff and on the substitution of Sreenarayan Singh or his son as the legal representative of Rani Anandamoyi, must be ineffectual in affecting the plaintiff's right. The cases relied upon by the Court below in support of the opposite view, namely, the cases of Prosunno Chunder Bhattacharjee v. Kristo Chytunno Pal I.L.R (1878) 4 Cal., 342; Dunput Sing Bahadoor v. Rajessuree (1871) 15 W.R., 476, and Sankara Subbayyar v. Ramasami Ayyangar I.L.R (1897) 20 Mad., 454, are distinguishable from the present. In the first mentioned case, namely, that of Prosunno Chunder Bhattacharjee v. Kristo Chytunno Pal I.L.R (1878) 4 Cal. 342, the facts were of a very peculiar nature, the party entitled to represent the deceased, namely, the executor to his will, having kept secret the existence of the will until after the creditor had obtained his decree against a party in possession of the estate of the deceased. Moreover, the hardship and injustice to the creditor, which led the learned Judges to take the view they have taken, no longer exists, as by Sections 21 and 23 of the Probate and Administration Act (V of 1881) the creditor himself can obtain letters of administration to the estate of his deceased debtor. The next case, Roodro Narain Roy v. Nittyanund Doss (1867) 8 W.E., 195, has very little bearing upon the present question. The third case relied upon, namely, that of Dunput Sing Bahadoor v. Rajessuree (1871) 15 W.R., 476, was decided with reference to Section 210 of the former CPC (Act VIII of 1859), according to which execution might be had against the legal representative or the estate of the deceased judgment-debtor. But under the present law, Section 234 of the CPC (Act XIV of 1882), which corresponds to Section 210 of the old Code, the words "or the estate" have been left out. The last

case cited merely followed the case of *Prosunno Chunder Bhattacharjee v. Kristo Chytunno Pal* I.L.R (1878) 4 Cal. 342.

25. But, though that is so, so far as the grounds common to the execution proceedings under the two decrees are concerned, the case in which Bishun Chand Dhudhuria was the decree-holder stands on a different footing. Unlike the decree of Bidyadhur Pandit, which was obtained against Rani Anandamoyi, the decree of Bishun Chand Dhudhuria was passed in a suit which was brought after Rani Anandamoyi's death, and in which the present plaintiff Ranjit Singh was made a defendant. He was then a minor under the Court of Wards, and was represented by the manager under the Court of Wards. He made his defence denying Anandamoyi's right to mortgage the properties then in dispute (see Ex. A 2), though subsequently he retired from his defence as the judgment (Ex. A 5) shows; but it is clear from the decree (Ex. A 4) that he remained a party on the record, and the decree was made in his presence. Therefore, though the subsequent execution proceedings were taken against Hari Singh, minor son of Sreenarayan Singh, represented by his mother, Luchmi Bibi, without any notice to the present plaintiff, Ranjit Singh, yet he being a party to the suit in which the decree was passed, his remedy, if he could object to the sale that has taken place, was by an application u/s 244 of the Code of Civil Procedure, and not by a separate suit which is barred by that section. Moreover, we think it more than doubtful whether, after having been made a party to the suit along with the minor Hari Singh, and having retired from his defence, he can now object to any sale of the properties covered by the mortgage bond on which the suit was based. In our opinion, therefore, this suit, so far as it relates to the properties Nos. 2 and 4 of the plaint, namely, Taraf Kulubaria and Bajitpur and Taraf Chutipur, which were included in the suit of Bishun Chand (see Exs. A 3 and A 4) and were sold in execution of his decree (see Exs. A 19 and A 21) must be dismissed.

26. It was argued for the appellants that the suit as regards the properties sold in execution of Bidyadhur Pandit's decree was likewise barred by Section 244 of the Code of Civil Procedure. We do not consider this argument correct, because that decree was passed against Rani Anandamoyi, and the present plaintiff was not a party to the suit in which that decree was passed, nor does he claim to be a representative of the Rani. He claims as the heir of the Rani's husband, Kumar Ram Chand.

27. The seventh and the last contention of the appellants is, that the plaintiff is not entitled to redeem the mortgage to defendants 3 and 7 before the expiry, of the term of the usufructuary lease. We do not consider this contention; correct. The lease, as has been found by the Court below, and as is admitted in the argument for the appellants, is part of the mortgage transaction, and so the mortgagee is entitled to the mortgage money with interest and costs, but is not entitled to make any profit by the lease. That being so, and the redemption decree that has been made directing the payment by the plaintiff to the

mortgagee, not merely of the present worth of the money due, but of the entire amount due, the defendants can have no reason to complain of the decree made.

28. It remains now to consider the appeal of the plaintiff. The contention in that appeal is, that of the amount which the plaintiff has been ordered to pay for the redemption of the mortgage, one portion consisting of two items, namely, the sum of Rs. 388-14, he is not bound to pay under the terms of the mortgage. This contention is admitted by the learned Vakil for the defendants (appellants) to be well founded and must therefore prevail.

29. The result then is that the decree of the Court below must be set aside, and in lieu thereof a decree will be made, dismissing the plaintiff's prayer for a declaration that the properties in suit are debutter properties of the idol Sri Sri Lakshmi Narain Deb Thakur, dismissing also his claim for possession of properties Nos. 2 and 4 of the schedule to the plaint, and decreeing his claim for possession of the other two properties, namely, properties Nos. 1 and 3, in his own right, and directing that on his depositing in the Court below, within six months after this date, the sum of Rs. 9,006-8 due in respect of the ijara to Rani Mena Kumari Bibi, defendant No. 7, the plaintiff be put in possession of the two properties Nos. 1 and 3. The parties will pay and recover costs in this Court and the Court below in proportion to their success and failure.

30. It has been brought to our notice by the learned Vakil for the plaintiff (respondent) that the mortgagee, defendant, being in possession as usufructuary mortgagee, the amount that should have to be actually paid for redemption of the property ought to be only the amount of the mortgage debt that remains to be satisfied after giving the mortgagor credit for the amount realisable for the period during which the appeals have been pending, in addition to the amount for which credit has been given by the Court below. After hearing the learned Vakil for the mortgagee, we think that the objection taken is well founded, and that the amount that is payable by the plaintiff for the redemption of the property should be only the total of the amounts that are realisable for the years 1306 and 1307 B.S. at the rate of Rs. 2,071-8-0 per annum according to the account adopted by the Court below; and we, therefore, direct that the decree be drawn up accordingly.