(1902) 02 MAD CK 0029

In the Madras High Court

Vedapuratti and Others APPELLANT

Vs

Vallabha Valiya Raja and Others RESPONDENT

Date of Decision : 14-02-1902

Acts Referred:

Transfer of Property Act, 1882 — Section 93

Citation : (1902) ILR (Mad) 300

Hon'ble Judges : Arnold While, C.J;Moore, J;Davies, J;Bhashyam Ayyangar, J;Benson, J

Bench : Full Bench

Judgement

Arnold White, C.J.—The question which has been referred in this case is whether, notwithstanding the institution of a suit and the passing of a. decree for redemption, a subsequent suit for redemption of the same mortgage can be brought when the decree in the former suit has not been executed. I take it that for the purposes of this reference the words "when the decree in the former suit has not been executed" mean when the order provided for by Section 93 of the Transfer of Property Act for foreclosing the right to redeem, or for sale, as the case may be, has not been made.

2. The view which has been generally adopted by this High Court, though the decisions are not altogether uniform, is that a second suit will lie. The Bombay and Allahabad High Courts have held otherwise.

3. The answer to the question appears to me to depend-not upon whether or not at the time of the bringing of the second suit the relation of mortgagor and mortgagee subsists between the parties, but upon whether the mortgagor is precluded, by the operation of the doctrine of res judicata, by reason of the adjudication which he has already obtained, from bringing a second suit.

4. On the construction of Sections 92 and 93 of the Transfer of Property Act it is perfectly clear that the equity of redemption remains unforeclosed, and the relation of mortgagor and mortgagee continues, until the order absolute which is

contemplated by Section 93 is made. Section 92 requires the Court if the plaintiff succeeds (i.e., if the plaintiff establishes that he is entitled to the decree which by Section 92 the Court is empowered to make) to order that, if the plaintiff pays in pursuance of the order of the Court, certain things shall be done, and that if he does not pay certain legal consequences shall ensue. Section 93 provides that, if payment in pursuance of the order of the Court has not been made, the defendant may apply, and the Court shall order, that the mortgaged property be sold or the plaintiff''s right to redeem be foreclosed, as the case may be; and the section expressly enacts that on the making of an order under the section the right to redeem and the security shall both be extinguished. If the right to redeem is only extinguished when an order is made u/s 93, it follows that the right is a subsisting right until the order is made. It does not, however, follow that the right is enforcible by means of a second redemption suit. It seems to me that though the right subsists the remedy is barred by operation of the rule of law which is embodied in Section 13 of the Code of Civil Procedure. The Legislature has laid down what is the "matter in issue" in a redemption suit. In order to succeed the mortgagor has to show that he is entitled be a decree ordering that if he pays off the mortgage debt in pursuance of the order of the Court, the mortgagee shall re-transfer the property and if necessary put him in possession. The matter in issue is-aye or no-is the mortgagor entitled to the decree which, if he succeeds, the Court is required by Section 92 to make. The question whether a decree u/s 92 operates as res judicata, as a final adjudication on the matter in issue between the same parties, is, as it seems to me, entirely different from the question whether such a decree is in itself capable of execution without the order absolute which is contemplated by Section 93 having been made.

5. As regards the authorities, the view which has usually prevailed in this Presidency, as already observed, has been that a second suit will lie.

6. In Sami v. Somasundram ILR 6 Mad. 119 Periandi v. Angappa ILR 7 Mad. 423 and Karuthasami v. Jaganatha ILR 8 Mad. 478 where it was held that a second suit would lie, the decree in the first suit contained no direction that in default of payment by the mortgagor the equity of redemption should be foreclosed. In the case in which the present reference has been made the decree directed (the mortgage being a usufructuary mortgage) that if the mortgagor failed to pay in pursuance of the order of the Court the property should be sold. Possibly the present case may be distinguished from the earlier authorities upon this ground, but it seems to me that, so far as the question of res judicata is concerned, it is immaterial whether or not the decree in the first suit directs that if the mortgagor does not pay as ordered by the Court the equity of redemption should be foreclosed or the property should be sold. The basis of the decision in Periandi v. Angappa ILR 7 Mad. 423 and in the later Madras oases in which the same view was adopted, was that at the time the second suit was brought the relation of mortgagor and mortgagee still subsisted. But, as I have said, the question is not what are the rights of the mortgagor, but what, in the events which have

happened, is the legal remedy which is open to him to enforce these rights. In Ramunni v. Brahma Dattan ILR 15 Mad. 366 the question again came up for consideration and was fully discussed by Sir Muttusami Ayyar and Mr. Justice Best who re-affirmed the view adopted in the earlier Madras cases and dissented from that of the Bombay High Court in Gan Savant Bal Savant v. Narayan Dhond Savant ILR 7 Bom. 467. Sir Muttusami Ayyar observes that the Madras decisions are more consistent with the scheme of the Transfer of Property Act .while the Bombay decisions introduce a doctrine of constructive foreclosure founded on the plea of res judicata. This observation appears to have been made with reference to the Bombay decision in Maloji v. Sagaji ILR 13 Bom. 567. I agree that any doctrine of constructive foreclosure is foreign to the scheme of the Transfer of Property Act. (As a matter of fact the Transfer of Property Act did not apply in Bombay at the time these two cases were decided.) As regards the earlier Bombay case to which I have referred, the judgment of Sir Raymond West is not based on any such technical ground but on the general principles of the law of res judicata.. The precise point came before a Division Bench in Ramasami v. Sami ILR 17 Mad. 96 where it was held that a second suit for redemption would. not lie. I agree with the conclusion at which the Court arrived, but with all respect to the learned Judges who decided that case, it seems to me that the matter was res judicata, not because the decree u/s 92 became final at the expiry of the time fixed for payment thereby, although no order had been made u/s 93, but because the matter in issue became res judicata as between the parties from the time the mortgagor''s right to redeem was adjudicated on by a decree made u/s 92. In the Full Bench Case of Vallabha Vliya Rajah v. Vedapuratti ILR 19 Mad. 40 the question referred was whether, after the expiration of the time mentioned in the decree and before any order for sale, the mortgagor is precluded from redeeming the property. The actual point decided was that after the expiration of the time mentioned in the decree and before any order for sale it was not open to the plaintiff to apply for execution of the decree. The question now before us was only dealt with incidentally in that case, and the decision cannot be put higher than that the learned Judges dealt with the case before them upon the assumption that a second suit will lie, and that the earlier Madras cases, assuming them to be good law, show that the mortgagor who has allowed the time fixed for payment to expire, is not without a remedy. It is to be observed that in the case which came before the Full Bench there had been no formal application for an extension of time and the question whether there is power to extend the time on the application of the mortgagor after the expiry of the time fixed, and without any application for sale or foreclosure being made by the mortgagee, appears to be still open so far as the decisions of this High Court are concerned. In Bombay it has been expressly held that under the proviso to Section 93 of the Act an application to extend the time for redemption fixed by the original decree may be made at any time before the order absolute is made Nandram v. Babaji ILR 22 Bom. 771. In Nainappa Chetti v. Chidambaram Chetti ILR 21 Mad. 18 a Division Bench again adopted the view which has usually prevailed in this Court and held that, inasmuch as the relation of mortgagor and mortgagee had not been put an end to, a second suit would lie. The learned Judges, however, were of opinion that, though the light of the mortgagor for a decree u/s 92 was not res judicata, the findings in the previous suit as to the amount of the debt and the extent to which it bound the estate were res judicata. With all deference it seems to me that, for the purpose of the question of res judicata, it is difficult to make a valid distinction between the findings of fact as to the conditions upon which the mortgagor is entitled to redeem and the adjudication in law that the mortgagor is entitled to radeem on complying with certain prescribed conditions.

7. As regards the Bombay authorities, I have already referred to the cases of Gan Savant Bal Savant v. Narayan Dhond Savant ILR 7 Bom. 467 and Maloji v. Sagaji ILR 13 Bom. 567. As regards the latter case it is not necessary to express an opinion as to whether, in so far as the decision goes beyond the point now before us, the case was rightly decided.

8. As regards the Allahabad High Court, the question was considered by Sir John Edge and Mr. Justice Blair in Raja Rant Singhji v. Chunni Lal ILR 19 All. 205 and by Sir Arthur Strachey and Mr. Justice Knox in Dondh Bahadur Rai v. Tek Narain Rai ILR 21 All. 251. In the former case the learned Judges expressed the view that a second suit was precluded by Section 13 of the Civil Procedure Code. In the latter case it was held that the dismissal of a suit for redemption on the ground that the mortgagor had not prior to its institution paid or tendered the mortgage money at a time authorised by the deed, did not operate as foreclosure or res judicata so as to bar a second suit. It seems to me that this case may be distinguished on the short ground, that the cause of action in the second suit was different from that in the first. Prior to the institution of the first suit tender as authorised by the deed had not been made. Prior to the institution of the second suit such tender had been made. Further, in the Allahabad case the mortgagor''s suit had been dismissed whilst in the present case the mortgagor obtained the decree for which he sued. It may well be that the English rule that a suit for the redemption of a legal mortgage which is dismissed for any reason except want of prosecution operates as a decree for foreclosure see Marshall v. Shrewsbury L.R.10 Ch. App. 250 has no place in the Indian law of mortgage. If it has not, the equity of redemption in such a case would remain unforeclosed, but, it does not follow that a mortgagor who has brought his suit and failed can seek the aid of the Court by another suit for the purpose of enforcing his right. Still less does it follow when the mortgagor has brought his suit and obtained his decree that a second suit is maintainable. As pointed out by Sir Arthur Strachey the incidents of a Welsh mortgage closely resemble those of a usufructuary mortgage under the Transfer of Property Act, and the learned Judge himself suggests that the decision in Curtis v. Holcombe 6 L.J. Ch. 156 (where the mortgagor filed a bill for the redemption of a Walsh mortgage and obtained a decree) might be analogous to a case where, as here, the plaintiff obtained the decree for which he asked, though it was not analogous to the case before the Allahabad High Court where the plaintiff failed to obtain a decree. Moreover, Sir

Arthur Strachey expressly distinguishes the earlier Allahabad decision David Hay v. Razi-ud-din ILR 19 All. 202, upon the ground that in that case there was prior decree for redemption. He observes "It is sufficient to say that, in our opinion, the principle of David Hay v. Razi-ud-din ILR 19 All. 202 should not be extended to a case where no decree for redemption has been passed prior to the suit before the Court."

9. As regards the Calcutta High Court, the only two decisions to which our attention has been called which bear upon the point Siva Pershad Maity v. Nundo lall Kar Mahapatra ILR 18 Calc. 139 and Boy Dinkur Doyal v. Sheo Golam Singh 22 W.R. 172 appear to be in conflict.

10. For the reasons which I have stated, I think the answer to the question which has been submitted to us should be in the negative.

Davies, J.

11. The question is whether a mortgagor who has once obtained a decree for redemption can under any circumstances bring a second suit for the same relief. The solution of the question seems to me to lie in a nutshell. If the decree the mortgagor has obtained is a final decree, as the majority of this Court has held in the reference to the Full Bench in Karuppan Chetti v. Tandavaraya Desikar See ante p. 244, a second suit must undoubtedly be barred as res judicata u/s 13 of the Code of Civil Procedure. If, as the minority of this Court has held in the same reference, the decree the mortgagor has obtained is only a preliminary decree, then the suit is still pending, and a second suit is debarred u/s 12 of the Code. On these grounds alone I would decide that no second suit is maintainable.

12. The particular reason for the opinion that a second suit for the redemption of a mortgage is admissible apparently is that the right to redeem subsists, apart from the decree, for the whole period of sixty years during which a suit or suits for redemption may be brought. But if that argument were sound any other right, for instance, the right to recover a debt, would also subsist until the period of limitation for bringing a suit to enforce it had elapsed. There seems to be no difference between the cases. I am not aware of any special sanctity about a right to redeem which places it on a higher footing than any other legal right in respect to the enforcement of it by a suit. In my opinion, they are all subject to the same processual law, namely, that once any right has been enforced by a suit in which a decree has been obtained, the decree becomes the embodiment of that right, and that right in its inchoate state is merged in the decree. If a second suit is allowable in any case, it must be allowable in all cases, and there is no reason why if a second suit is allowed there should not be a third, a fourth or a fiftieth suit on the same cause of action so long as the cause of action remained unbarred by limitation. In the case of a right to redeem, such suits might be brought for sixty years from the date of the mortgage, and if in any suit so brought the mortgage was acknowledged, as it could hardly fail to be, a fresh starting point for the sixty years'' limitation would begin from the date of such

acknowledgment, and the right to sue would thereby become in practice everlasting. I consider that this re-ductio ad absurdum conclusively shows that no second or further suit lies in a case where there has once been a suit for redemption and a decree whether preliminary or final has been obtained therein.

13. My answer to the reference would therefore be emphatically in the negative.

Bhashyam Ayyangar, J.

14. The circumstances which have led to the institution by the first respondent of this second suit for redeeming the mortgage of 1858, for the redemption of which identical mortgage he had already obtained a decree in Original Suit No. 3 of 1889, will be found fully set forth in Vallabha Valiya Rajah v. Vedapuratti ILR 19 Mad. 40. The mortgage being a usufructuary mortgage, the decree in Original Suit No. 3 of 1889 did not provide for foreclosure of plaintiff''s right to redeem in default of payment within the time fixed in the decree for redemption, but only provided for sale of the mortgaged property (vide last paragraph of Section 92, Transfer of Property Act). It does not appear that plaintiff ever applied under the proviso to Section 93 for extending the time fixed for payment; but without obtaining any such extension he unsuccessfully attempted to redeem and recover possession of the mortgaged property by payment into Court after the day appointed. In Vallabha Valiya Rajah v. Vedapuratti ILR 19 Mad. 40 it was assumed, following the opinion expressed in the decisions of this Court in Elayadatk v. Krishna ILR 13 Mad. 267 and Kanara Kurup v. Govinda Kurup ILR 16 Mad. 214 that the proviso was only intended to come into play when an application has been made by the mortgagee-the defendant-for the final order for foreclosure or sale, to which he may be entitled under paragraph 2 of Section 93 (Transfer of Property Act). Such assumption is possibly due to the circumstance that the proviso has been inserted in Sections 87 and 93 and not in 86 and 92. The reason for not inserting it in Sections 86 and 92 which relate to the passing of decrees in foreclosure and redemption suits respectively, seems to me to be obvious. If it was so inserted, the order postponing the day fixed for payment will be one for amendment of decree and will have to be passed by the Court which passed the decree, either in the first instance or on appeal confirming, varying or reversing the original decree, whereas by inserting the proviso in Sections 87 and 93 the order postponing the date of payment will operate as an order passed in execution proceedings relating to the stay of execution of the decree within the meaning of Section 244, Clause (c) of the CPC Hulas Rai v. Pirthi Singh ILR 19 All. 502, Note and Rahima v. Nepal Rai ILR 14 All. 520, and can be passed by the Court executing the decree, though such Court may be different from the one which passed the decree. Though in regard to the execution of a decree the initiative will have to be taken by the party entitled to execute the decree, yet in regard to the stay of its execution, the party against whom it may be executed may take the initiative and apply for and obtain stay of execution in anticipation, or apply for such stay when motion is made for execution of the decree. Under the English law, as pointed out by Shephard, J., in

Vallabha Valia Rajah v. Vedapuratti ILR 19 Mad. 40 the time for payment may be extended either on the independent motion of the mortgagor-the plaintiff-or on the hearing of an application by the mortgagee-the defendant-to make the foreclosure absolute Alden v. Foster 5 Beav. 592 and Jones v. Creswicke 9 Sim. 304 at p. 317 and I entirely fail to see anything in the language of Sections 87 and 93 of the Transfer of Property Act, to show that the salutary English pratice was intended to be departed from and that the proviso for extension of the time fixed for payment cannot be availed of by the mortgagor unless and until an application is made by the mortgagee for an order for foreclosure absolute or for sale, an application which in the nature of things can be made only after the period fixed for redemption has expired. I can conceive of no intelligible reason for imputing such intention to the Indian Legislature. As observed in my judgment in Karuppan Chetti v. Tandavaraya Desikar See ante p. 244 (written some days ago and before this reference came on for hearing though pronounced only to-day), the use of the word ''postpone'' in the proviso to Sections 87 and 93 of the Transfer of Property Act, clearly indicates that as a general rule the application for extension of the time fixed for payment is assumed to be made before the day fixed for payment, and, therefore, by the mortgagor, before the mortgagee applies for an order absolute for foreclosure or sale. In the present case, the mortgagee not having chosen to apply-evidently because he was in possession and the time fixed for redemption had expired-under paragraph 2 of Section 93 for an order that the mortgaged property be sold, it was assumed that the mortgagor could apply for no extension of time, and,'' it was pointed out Vallabha Valiya Rajah v. Vedapurati ILR 19 Mad. 40 that if the law as laid down in the previous decisions of this Court in Sami v. Somasundaram ILR 6 Mad. 119 Periandi v. Angappa ILR 7 Mad. 423 Unnian v. Rama ILR 8 Mad. 415, and Ramunni v. Brahma Dattan L.R. 15 Mad. 366, was good law, he was not without remedy and could bring a second suit for redemption. The possibility of the mortgagor-the plaintiff-himself applying for an order for sale of the mortgaged property in pursuance of the decree, which directed sale of the property in default of payment within the time fixed, was not considered. In a suit for foreclosure, the mortgagor-the defendant-may, under paragraph 2 of Section 88, apply for and obtain a decree for sale in lieu of foreclosure, though u/s 67 (Transfer of Property Act) the mortgagor, as plaintiff, could bring no suit for sale, as he could in England u/s 25 of the Conveyancing and Law of Property Act, 1881. Notwithstanding that Section 93 (Transfer of Property Act) deals only with a mortgagee''s application for an order for sale, it would on principle seem that there could be no objection to the mortgagor applying for execution of the decree passed u/s 92 and obtaining an order for sale of the mortgaged property, the sale of which has been decreed under the last paragraph of Section 92, in case payment is not made on or before the day fixed in the decree for redemption.

15. Turning now to the general question referred to the Full Bench - apart from the special facts of the case in which the question has arisen-I am clearly of

opinion that the present suit for redemption of the very same mortgage for the redemption of which a decree had already been obtained in Original Suit No. 3 of 1889 is barred as res judicata by Section 13, Civil Procedure Code, and is also barred by Section 244, Civil Procedure Code, notwithstanding that no order absolute for sale has been passed in the former suit.

16. In Kamesvar Pershal v. Rajkumari Rattun Koer L.R. 19 IndAp 234, the Judicial Committee of the Privy Council, adverting to Section 13, Civil Procedure Code, held that neither the Procedure Code of 1877 nor that of 1882 introduced any new law, but only put into the form of a Code that which was the state of the law at the time, and that the state of the law at the time was that persons should not be harassed by continuous litigation about the same subject-matter. Though the wording of Section 13, Civil Procedure Code, is not as felicitous as one might wish, it virtually reproduces the firmly established law of res judicata,, viz., that a final decision by a Court of competent jurisdiction of a matter directly and substantially at issue between certain contending parties, shall as a plea be a bar and as evidence be conclusive in any subsequent suit between the same parties. Explanation IV to the section makes it clear that interlocutory orders or decisions or preliminary decrees, if there be any such under the Indian law, are not ''final decisions'' within the meaning of the section, having the force of res judicata.

17. In addition to the cases of Ex parte Chinery L.R. 12 Q.B.D. 342, and Smith v. Davies L.R. 31 Ch. D. 595, which I cited in my judgment in Karuppan Chetti v. Tandavaraya Desikar See ante p. 244 as explaining what a ''final judgment'' in law strictly is as distinguished from an ''order, I may refer to Daniell''s ''Chancery Practice,'' 6th edition, page 788, in which it is laid down that ''where a judgment does not adjourn the consideration of the cause, it is said to be a final judgment'' and to the following extract from the judgment delivered by Story, J., in Whiting v. Bank of United States 13 Peters 6 at p. 15 Decisions of the Supreme Court, United States, America : "That depends upon this; whether the decree of foreclosure and sale is to be considered as the final decree in the sense of a Court of Equity and the proceedings on that decree a mere mode of enforcing the rights of the creditor and for the benefit of the debtor; or whether the decree is to be deemed final only after the return and confirmation of the sale by a decretal order of the Court. We are of opinion that the former is the true view of the matter. The original decree of foreclosure and sale was final upon the merits of the controversy. The defendants had a right to appeal from that decree as final upon those merits, as soon as it was pronounced, in order to prevent an irreparable mischief to themselves. For if the sale had been completed under the decree the title of the purchaser under the decree would not have been overthrown or invalidated even by a reversal of the decree; and consequently the title of the defendants to the lands would have been extinguished; and their redress upon the reversal would have been of a different sort from that of a restitution of the land sold. In Ray v. Law 3 Cranch. 179, it was held by this Court, that a decree of sale of mortgaged premises was a final decree in the sense of the Act of Congress upon which an appeal would lie to the Supreme

Court. This decision must have been made on the general ground that a decree final upon the merits of the controversy between the parties is a decree upon which a bill of review would lie, without and independent of any ulterior proceedings. Indeed the ulterior proceedings are but a mode of executing the original decree, like the award of an execution at law." It is therefore abundantly clear that a decree for redemption passed u/s 92 (Transfer of Property Act) is a final judgment or decision within the meaning of Section 13, Civil Procedure Code, and falls within the first part of the definition of ''decree'' in the Civil Procedure Code. Until the suit reaches that stage, it can, u/s 373, Civil Procedure Code, be withdrawn with liberty to bring a fresh suit, or u/s 375 be adjusted by any lawful agreement or compromise in accordance with which a decree may be passed so far as it relates to the suit, and issues may be amended or additional issues framed u/s 149, Civil Procedure Code. Though in one sense, the suit is pending Salt v. Gooper L.R. 16 Ch.D. 544; Collinson v. Jeffery [1896] 1 Ch. 644, until the decree or judgment is worked out and satisfied, and proceedings in execution thereof are ''proceedings in suits'' (explanation to Section 647, Civil Procedure Code) yet after the decree (vide Section 375-A, Civil Procedure Code) the suit cannot, unless the same be carried and is pending in appeal, be withdrawn with liberty to bring a fresh suit, nor superseded or varied by a compromise or adjustment except in one or two particulars (Section 206, Civil Procedure Code). I presume that no one will seriously contend that a suit for foreclosure, sale or redemption can be withdrawn with liberty to sue again, after decree has been passed under Sections 86, 88 or 92 (Transfer of Property Act).

18. In Nainappa Chetti v. Chidambaram Chetti ILR 21 Mad. 18, while holding that a second suit for redemption was maintainable, in accordance with certain previous decisions of this Court, the decree in the first suit passed u/s 92 (Transfer of Property Act) was held to be a final judgment operating as res judicata as to the relation, between the parties, of mortgagor and mortgagee in respect of the subject-matter of the suit, and also as to the amount due for redemption at the date of the former decree. I should fully concur in the decision of this Court in Nainappa Chetti v. Chidambaram Chetti ILR 21 Mad. 18, holding that in that case a subsequent suit for redemption was maintainable, if the decree in the former suit had been-which in fact it was not-a mere declaratory decree, not capable of execution, establishing the relation of mortgagor and mortgagee and the state of the account between the mortgagor and mortgagee at the date of the said decree, assuming that such a decree could have been passed.

19. If the order absolute for foreclosure or sale u/s 93 is alone to be regarded as the final judgment or decision in the suit, that alone can operate as res judicata and the decree passed u/s 92 will have to be regarded simply as an interlocutory order or proceeding which cannot have the force of res judicata. If this be the right view and if no order absolute for foreclosure or sale be passed, the suit will have to be regarded as still pending and Section 12, Civil Procedure Code, will operate as a bar to the trial of a second suit for the same relief between the

same parties.

20. In Lockyer v. Ferryman L.R. 2 App. Cas. 519, on the authority of which it was held by the High Court of Bombay Gan Savant Bal Savant v. Narayan Dhond Savant ILR 7 Bom. 467 that a decree for redemption, on default of the decree-holder to pay the money within the time fixed in the decree, or if none be fixed, within the time allowed by law for execution of the decree, operates as a judgment of foreclosure and debars the mortgagor from afterwards bringing a second suit for redeeming the same property-Lord Selborne laid down that ''when there is res judicata the original cause of action is gone and can only be restored by getting ride of the res judicata''. Lord Blackburn there explained the principle of res judicata as follows: "When a competent tribunal having had a case before them have given a final judgment it is res judicata. I do not mean to express any opinion as to what would be a sufficient ground to re-open the case .... The object of the rule of res judicata is always put upon two grounds-the one, public policy, that it is the interest of the State that there should be an end of litigation, and the other the hardship on the individual that he should be vexed twice for the same cause." Again, Lord Penzance, in his judgment in Kendall v. Hamilton L.R. 4 App. Cas. 504 says, "when that which was originally only a right of action has been advanced into a judgment of a Court of Record the judgment is a bar to an action brought on the original cause of action. The reasons for this result are given by Baron Parke in King v. Hoare 13 M. & W. 494. He says ''The judgment is a bar to the original cause of action because it is thereby reduced to a certainty and the object of the suit attained, so far as it can be at that stage; and it would be useless and vexatious to subject the defendants to another suit for the purpose of attaining the same result. Hence the legal maxim ''Transit in rem judicatam''; the cause of action is changed into matter of record which is of a higher nature and the inferior remedy is merged in the higher.'' "

21. The whole argument in support of the contention that a second suit for redemption is maintainable in the absence of an order absolute for foreclosure or sale, proceeds upon the supposition that, in spite of the express declaration [in Section 2 (a) of the Transfer of Property Act] that nothing therein contained shall be deemed to affect the provisions of any enactment not thereby expressly repealed, there is some magic in Sections 86 to 93 of the Transfer of Property Act and in particular in the word ''absolute'' or ''absolutely'' therein occurring, which overrides the fundamental principle of res judicata embodied in section, 13, Civil Procedure Code. Section 60 (Transfer of Property Act) defining the mortgagor''s right to redeem specifies the actual remedies which he is entitled to in exercising his right of redemption, the remedies, of course, being such as he would obtain in enforcement or execution of the redemption decree. Similarly Section 67, in defining the mortgagee''s right to foreclosure or sale, specifies the remedy he is entitled to in exercising such right, i.e., an order that the mortgagor shall be absolutely debarred of his right to redeem or an order that the mortgaged property be sold. Such definition of the mortgagor''s right of redemption and of the mortgagee''s right of foreclosure or sale was relied on in

the course of argument in Karuppn Chetti v. Tandavaraya Desikar See ante p. 244, as leading to the conclusion that the decrees passed under Sections 86, 88 and 92 are only ''preliminary decrees,'' or decrees nisi, and that the ''final'' decrees, capable of execution in the suits, are the orders passed under Sections 87, 89 and 93 respectively. In my opinion the inference to be drawn is just the opposite. If you want to define the right which a creditor has against his debtor, you will have to say that he is entitled to be repaid the amount of the debt and not simply to a decree against his debtor for such payment. Sections 60 and 67 therefore declare what the mortgagor or mortgagee is actually to realize by enforcing his right, i.e., the relief which he is entitled to by enforcing or executing the decree establishing his right. In the case of redemption, delivery back of the mortgage deeds, possession of the mortgaged property and a reconveyance are the reliefs (see Section 60, Transfer of Property Act) which the mortgagor obtains by executing his decree for redemption. As the provisions of the CPC are sufficient to work out a decree for redemption no special provisions for the same are made in the Transfer of Property Act, except for the mortgagor being put in possession of the mortgaged property. Even this last seems superfluous (vide Section 263, Civil Procedure Code); but, whether superfluous or not, the provision made for it in the first paragraphs of Sections 87, 89 and 93 conclusively shows that those sections relate to the enforcement or execution of the decrees passed under Sections 86, 88 and 92, and it is significant that Sections 87, 89 and 93 do not provide for the passing of an order absolute for putting the mortgagor in possession, but only for the executive act of putting him in possession. In the case of a foreclosure decree, there is nothing in the CPC as to the mode of enforcing the same. The second paragraphs of Sections 87 and 93 (Transfer of Property Act) provide that the same is to be enforced by obtaining an order of Court debarring the mortgagor absolutely of all right to redeem. This is the mode provided by the Transfer of Property Act, following the English Chancery Practice, for working out or executing a decree for foreclosure passed u/s 86 or 92 (of the Transfer of Property Act) as the case may be. In addition to such order it is provided that the Court may enforce the decree, if necessary, also by delivery of possession of the property to the mortgagee, (see end of the second paragraph of Section 87 and of the third paragraph of Section 93) though the decree itself does not in terms provide for such delivery of possession, as it does in the case of delivery of possession to the mortgagor. I have already explained in my judgment in Karuppan Chetti v. Tandavaraya Desikar See ante p. 244 that an application made u/s 89 or 93 for an order absolute for sale is only an application for execution of the decree for sale passed under Sections 88 and 92 and indicated the reasons for special provision being made in the Transfer of Property Act for the passing of such order for sale. Whether the decree be in a suit for foreclosure or in a suit for sale or in a suit for redemption, there is in each a conditional decree for redemption in favour of the mortgagor, the condition being the payment by the mortgagor of the amount decreed on or before the day fixed. But the Transfer of Property Act does not provide for an application being made by the mortgagor, after such payment, for an order absolute for redemption, or for the passing of any such order. This conclusively shows that the decrees passed under Sections 8(1, 88 and 92 are not ''preliminary decrees,'' or decrees nisi, which requite to be perfected by being made absolute or unconditional, on the fulfilment of a condition or contingency subject to which the decrees were passed. But so far as the decree is one for foreclosure or sale provision is made for the mortgagee applying for an order absolute for foreclosure or sale as the case may be, to supplement the imperfect provisions of the CPC relating to the enforcement or execution of decrees. Decrees for specific performance, decrees respecting rights of easement and similar decrees are often made conditional, but they are not the less ''final judgments'' having the force of res judicata. This, I venture to state, is equally so under the English law, and all decrees whether conditional or unconditional are to be worked out and enforced in execution, and the orders passed therefor are not to be regarded as the final judgment or decree in the suits but only as orders relating to the execution of the decree (vide R.S.C. Ord. 42r. 9 Ann. Practice, 1902, p. 571).

22. In Monkhouse v. The Corporation of Bedford 17 Ves. 380 the plaintiff-the mortgagee-having obtained the usual decree for foreclosure at the Rolls as mortgagee, and an appeal therefrom having been preferred to the House of Lords by the mortgagor, before the order for foreclosure absolute was passed, a motion was made by the mortgagor-the defendant -before the lower Court to suspend the execution of the decree until six months after the appeal should have been heard. The lower Court in granting the application on certain terms stated as follows :-"This decree must therefore be taken to be right to the extent of letting execution upon it, unless the Court sees that if it turns out to be wrong the party cannot be set right again." It will be observed that in that case the decree from which an appeal was preferred to the House of Lords was the usual decree in an action by a mortgagee for foreclosure or sale, corresponding to that u/s 86 of the Transfer of Property Act, and that it was treated as the final judgment in the action and as one capable of being enforced by execution pending appeal see also Finch v. Shaw 20 Beav. 555. Similarly here also, pending appeals and second appeals from the original decree, the Court whose duty it is to execute the decree may stay execution of the same by postponing from time to time, under the proviso to Sections 87 and 93, the day fixed for payment. After the passing of the decree referred to in Sections 86, 88 and 92, the cause is not adjourned for further consideration, but an order for foreclosure absolute or for sale, may, in execution of the decree, be, under the English law, obtained on application made ex parte, supported by an affidavit, by the mortgagee or his attorney, of due attendance at the place appointed for payment and of nonpayment of the amount certified to be due (see Ann. Practice for 1902, p. 773) and under the Indian law, on a verified application made under Sections 230 and 235, Civil Procedure Code.

23. The conclusions I have arrived at both in the references made to the Full Bench in Mallikarjunadu Setti v. Lingamurti Pantulu See ante p. 244 &c and in

this case, as to the scheme of the mortgage chapter in the Transfer of Property Act and its relation to chapter XIX of the Civil Procedure Code, are, I venture to say, not only in strict conformity with the Transfer of Property Act- which in this respect is substantially the same as the English Chancery law-but also steer clear of the innumerable difficulties, as to the right of appeals, the period of limitation for applications under Sections 87, 89 and 93, the Court which is competent to pass the orders therein mentioned, the Court fees payable in respect of appeals, &c, which will result from the position taken by the Calcutta High Court that a decree passed under Sections 86, 88 or 92 of the Transfer of Property Act is only a preliminary decree, or decree nisi, and that it is the order passed under Sections 87, 89 or 93 that constitutes the final decree or decree absolute. In the view that the decrees under Sections 86, 88 and 92 are the final judgments or decisions in the suit, they will be appealable as ''decrees,'' according to the first part of the definition of ''decree'' in the Civil Procedure Code, and applications made under Sections 87, 89 and 93 will be governed by Article 179 of the second schedule to the Limitation Act, and orders thereon can be passed by the Court executing the decree and will be appealable as orders passed u/s 244 (c), Civil Procedure Code-comprised within the second part of the definition of ''decree'' in the Civil Procedure Code-subject according to the notification of the Government of India to the payment of the fixed Court fee prescribed by No. 11 of Schedule 2 of the Court Fees Act.

24. The learned Counsel for the respondent contends-and this is the contention principally relied on by him -that even if the decree passed u/s 92 in the former suit be regarded as the final judgment or decision within the meaning of Section 13, Civil Procedure Code, the right to redeem still subsists, inasmuch as no order absolute for sale has been made u/s 93 - which alone can extinguish that right- and that therefore the decree in the former suit can be no bar to the mortgagor enforcing his right of redemption in the present suit, the relation of mortgagor and mortgagee still continuing and the right of redemption being inseparable from such relation.

25. In support of this contention he relies upon the decisions of this Court in Sami v. Somasundram ILR 6 Mad. 119, Periandi v. Angappa ILR 7 Mad. 423, Karuthasami v. Jaganatha ILR 8. Mad. 478, Ramunni v. Brahma Dattan ILR 15 Mad. 366, and Nainappa Chetti v. Chidambaram Chetti ILR 21 Mad. 18, which led to the order of reference to a Full Bench in this case, as they are in conflict with the decisions of the Bombay High Court in Gan Savant Bal Savant v. Narayan Dhond Savant ILR 7 Bom. 467 and Maloji v. Sagaji ILR 13 Bom. 567 and of the Allahabad High Court in David Hay v. Razi-ud-din ILR 19 All. 203 and not reconcileable with the decision of this Court in Ramasami v. Sami ILR 17 Mad. 96, if the dictum of Shephard, J., in Vallabha Valiya Raja v. Vedapuratti ILR 19 Mad. 40, that ''it would make no difference whether or not the decree pleaded in bar contained a direction for foreclosure or sale'' were sound. In Sami v. Somasundram I L.R. 6 Mad. 119, Periandi v. Angappa ILR 7 Mad. 423, Karuthasami v. Jaganatha ILR 8 Mad. 478, Ramunni v. Brahma Dattan ILR 15

Mad. 366, and Nainappa Chetti v. Chidambaram Chetti ILR 21 Mad. 18 in all of which it was held that a second suit for redemption was maintainable-the decree in the first suit which was pleaded in bar contained no directions for foreclosure or sale in default of redemption. In the first of these cases, the decree in the first suit was left unexecuted for 15 years, but it was regarded in the events which had happened as a declaratory decree, though he was entitled under that decree to recover possession on making a certain payment, and the second suit for redemption which was based on the original mortgage was held maintainable. In the second case, the execution of the decree passed in the first suit was barred by limitation, and the second suit was held maintainable as the right to redeem had not been foreclosed. In the third case, although the execution of the decree in the first suit was barred by limitation, the second suit for redemption was held maintainable on the ground that the relation of mortgagor and mortgagee still subsisted and the right to redeem was inseparable from such relation so long as it existed. The same view was taken in Ramunni v. Brahma Dattan ILR 15 Mad. 366. These decisions were followed in Nainappa Chetti v. Chidambaram Chetti ILR 21 Mad. 18, but in all those cases the decision proceeded expressly on the ground that the decree in the first suit which was pleaded in bar contained no direction for foreclosure or sale in default of payment. But I agree with the dictum of Shephard, J., in Vallabha Valiya Raja v. Vedapuratti ILR 19 Mad. 40 already referred to, that inasmuch as it is the order of foreclosure absolute or sale that extinguishes the right of redemption and not the mere passing of the decree with a direction for foreclosure or sale in the event of non-payment on or before the day fixed, it can make no difference whether the decree did or did not contain a direction for foreclosure or sale. In the present case, the decree in the first suit did contain a direction for sale in default of payment, but, for the reasons already stated, the mortgagee, the defendant, did not choose to apply for an order absolute for sale. This case is like Ramasami v. Sami ILR 17 Mad. 96 in which it was held that a subsequent suit for redemption was barred by a decree for redemption in a former suit,-which decree provided that in default of redemption within the time limited thereby the right of redemption was to be foreclosed-though no order for foreclosure absolute had been made u/s 93. But if the decisions of this Court in the other cases are sound i.e. in Sami v. Somasundram ILR 6 Mad. 119, Periandi v. Angappa ILR 7 Mad. 423 Karuthasami v. Jaganatha ILR 8 Mad. 478, Ramunni v. Brahma Dattan ILR 15 Mad. 366, and Nainappa Chetti v. Chidambaram Chetti ILR 21 Mad. 18, the case in Ramasami v. Sami ILR 17 Mad. 96 and the present case cannot be logically distinguished therefrom simply on the ground that in those cases the decree in the first suit contained no direction for foreclosure or sale.

26. With all deference to the learned Judge, I find it impossible to adopt the reasoning on which the decisions of this Court in Sami v. Somasundram ILR 6 Mad. 119, Periindi v. Angappa ILR 7 Mad. 423, Karuthasami v. Jaganatha ILR 8 Mad. 478 and Ramunni v. Brahma Dattan ILR 15 Mad. 366, proceed and the conclusions arrived at therein. If those decisions are sound, there can be no limit

to the number of successive suits for redemption of the same mortgage and the fundamental principle on which the doctrine of res judicata is founded will have to be wholly ignored. If the principle of these decisions be-as it must-that so long as the relation of mortgagor and mortgagee is not extinguished by act of parties or by order of Court under Sections 87, 89 or 93 of the Transfer of Property Act, or by Section 28 of the Limitation Act, the right of redemption is inseparable from such relation, and that therefore there can be no impediment to the mortgagor''s bringing a suit for redemption although he had already obtained a decree for redemption, it will necessarily follow that he can institute in succession as many suits as he chooses for redeeming one and the same mortgage, and the mortgagee as many suits as he chooses for foreclosure or sale; for the right of redemption and the mortgage security are not extinguished until the passing of an order for foreclosure absolute or for sale. Even if the execution of the decree in the first suit be not barred by limitation, there will be nothing to prevent his instituting another suit for redemption, foreclosure or sale as the case may be. And if he can do so there will be nothing to preclude the defendant in the subsequent suit from applying, in execution of the decree in the former suit, for redemption, or for an order for foreclosure absolute or for sale as the case may be, if the execution of the decree therein be not barred by the law of limitation.

27. In considering whether the plea of res judicata operates as a bar to the suit, the question is not whether the alleged relation of mortgagor and mortgagee or any other legal relation between the parties to the suit subsists, but whether, assuming the same to subsist, the plaintiff is not precluded from seeking to enforce his right by reason of his having already sued upon the same cause of action and obtain an adjudication which it was competent for him to enforce and execute. If one obtains a mere declaratory decree, establishing a certain right, of the nature contemplated in Section 42 of the Specific Belief Act, and thereafter brings a subsequent suit to obtain a relief consequent upon such right, the decree in the former suit cannot as a plea be a bar to the subsequent suit, though as evidence it will be conclusive in his favour as to the right adjudicated upon therein. But a person who has obtained a decree establishing his right and entitling him to the consequential relief, cannot again sue for the same but can only work out his right and obtain the relief by executing the decree. And Section 244, Civil Procedure Coda, expressly prohibits a separate suit for the purpose.

28. Applying this principle to a mortgagor''s right of redemption, we find a complete definition of that right or cause of action in Section 60 of the Transfer of Property Act. The former suit in the present case was founded upon that cause of action and after a decree had been given therein u/s 92 of the Transfer of Property Act, the ''original cause of action is gone and can only be restored by getting rid of the res judicata,'' as observed by Lord Selborne in Lockyer v. Ferryman L.R. 2 App. Cas. 519 above referred to. The cause of action having thus been exhausted, there is no original cause of action, either in whole or in part, on which the mortgagor can again sue for redemption. If he allowed the

execution of that decree to become barred or was otherwise unable to execute the decree by reason of his not complying with the terms of the decree, the original cause of action, or any portion thereof, will not thereby revive. Under the proviso to Section 93 of the Transfer of Property Act, it was, in my opinion, competent for him to obtain postponement of the day fixed for payment of the money, provided he satisfied the Court that there was good and sufficient cause for his not being able to pay the amount on or before the day fixed. If he can be allowed to bring a fresh suit for redemption, this provision of the Transfer of Property Act that the time for redemption could be extended only on good cause, will be indirectly evaded.

29. It is true that until there is an order for foreclosure absolute or sale the right of redemption is not extinguished and there was no such order in the present case. That will not entitle him to bring a new suit for redemption, but he can exercise his right of redemption under the decree, if he be not barred, by limitation, by obtaining a postponement of the day fixed for payment, if he makes out a good cause for such extension of time. That the decree itself does not operate to extinguish the right of redemption by efflux of the time limited in the decree, but such extinguishment is postponed until the actual passing of an order for foreclosure absolute or sale, is really a concession in favour of the mortgagor so as to enable him to obtain an extension of time on good cause shown, even after the expiration of the period fixed in the decree, whereas if the decree itself operated so as to extinguish the right of redemption on the expiration of the period fixed in the decree such extension cannot be made and, in fact, if made, will be inoperative. Full effect is thus given to the provision made in the Transfer of Property Act in accordance with the Chancery Practice in England, for extinguishing the right of redemption only on the passing of an order for foreclosure absolute or sale, the only difference between the English and Indian laws being that under the former the order dismissing the suit for redemption in default of payment operates as the order of foreclosure absolute here passed u/s 93 of the Transfer of Property Act.

30. In the case of mortgage-decrees there is provision made for extinguishment of the security and of the right of redemption, but in the case of decrees in ejectment and other decrees there is no such provision, and Section 28 of the Limitation Act applies only to suits and not to the execution of decrees. If the owner of property obtains a decree in ejectment against a trespasser or a tenant whose tenancy has expired, can he bring another suit in ejectment on his original cause of action as owner or landlord, on the ground that his ownership has not been extinguished by the decree in the former suit or by any order passed therein subsequent to decree? If a mortgagor is to be at liberty to bring successive suits for redemption subject only to the extraordinarily long period of limitation applicable to suits for redemption, it will be difficult to discover or suggest a reason for denying such liberty to the owner of property who seeks to eject a trespasser, subject, of course, to the comparatively short period of limitation applicable thereto. There are numerous instances in which the right of

action alone is extinguished or destroyed, though the right of property to which it relates has not been extinguished. Thus, if a suit is dismissed u/s 102, Civil Procedure Code, for default of plaintiff''s appearance, or the plaintiff withdraws the same (Section 373, Civil Procedure Code) without obtaining permission to bring a fresh suit on the same cause of action, the right of action is extinguished and he is precluded from bringing a fresh suit on the same cause of action, though his substantive right of property may not be extinguished, and the dismissal or withdrawal may not even operate as res judicata against him in respect of his right of property. Similarly, if a plaintiff omits to sue in respect of any portion of his claim, he is precluded (Section 43, Civil Procedure Code) from suing in respect of the portion so omitted, though his right in respect of such portion may not be extinguished. I fancy that the result will be the same even if the suit so dismissed or withdrawn or portion omitted is by a mortgagor or mortgagee as the case may be. Certainly the result must a fortiori be the same if a decree has been given, and thus not only has the original cause of action gone, but the decree also operates as res judicata in respect of the right adjudged.

31. In regard to a mortgagee''s title in default of redemption by the mortgagor, the obtaining of an order for foreclosure absolute or of an order dismissing the mortgagor''s suit for redemption [which has the effect of an order for foreclosure absolute] is necessary to perfect his title as owner see Darnell''s ''Chancery Practice,'' 6th edition, page 1405; Frees v. Coke L.R.6 Ch. App. 645. Under the English law such an order operates as a conveyance on sale'' and has to be stamped ad valorem as such [vide Sections 54 and 57 of the English Stamp Act, 1891, and Section 6 of the English Finance Act, 1898]. In Wills v. Luff L.R. 38 Ch.D. 197 Chitty, J., says that after the passing of an order for foreclosure-absolute, "the action is at an end with the exception of the settlement of a conveyance by the Judge if the parties differ." Such conveyance is exempt from the payment of ad valorem stamp duty (proviso (b) to Section 6 of the English Finance Act, 1898), if such duty had been paid upon the decree or order for foreclosure absolute. A release by the mortgagor after judgment of foreclosure is equivalent to an absolute foreclosure by order Reynoldson v. Perkins Ambl. 564 at p. 565, and no order of foreclosure absolute need be obtained. Under the Transfer of Property Act the order of foreclosure absolute passed in execution of the decree operates judicially as an extinguishment of the right of redemption and as transfer of property in execution of decree or order of a Court [Section 2 (d) of the Transfer of Property Act] and the title of the mortgagee as owner is thus perfected and completed, The effect of an order of foreclosure absolute obtained by a legal mortgagee is to vest the ownership and beneficial title to the mortgaged land, for the first time, in the mortgagee Heath v. Pugh L.R. 6 Q.B.D. 345 Court of Appeal; (same case) on appeal to the House of Lords L.R. 7 App. Cas. 235. Under the English Chancery Practice, even after order of foreclosure absolute, the foreclosure can be reopened on good and sufficient cause Ford v. Wastell 2 Ph. 591; Willis v. Luff L.R. 38 Ch.D. 197 Daniell''s ''Chancery Practice,'' 6th edition, page 1406).

32. I shall now proceed to consider some decisions of the other High Courts bearing upon the question now under consideration. In Chaita v. Pumm Sookh 2 H.C.R. 256 it was held by a Division Bench of the North-West Provinces High Court (Morgan, C.J., and Spankie, J,) that when a decree for redemption is obtained but not executed within the prescribed period for execution, the mortgagee does not, by such omission, cease to be the mortgagee, but the mortgagor or his representative may still maintain a fresh suit for redemption. In Doobee Singh v. Jowkee Ram 3 H.C.R. 381 it was held by a Full Bench of the same High Court (Morgan, C.J., Roberts, Pearson, Turner and Spankie, JJ.) that when the nature of the decree is such that it could be executed, the decree-holder cannot bring a fresh suit founded upon the cause of action which has already been adjudicated upon and also upon the decree the execution of which was allowed to be barred by the law of limitation. In Sheik Goolam Hoosein v. Mussumat Alla Rukhee Beebee 3 H.C.R. 62 a Full Bench of the same High Court (Morgan, C.J., Ross, Turner, Spankie and Turnbull, J.J.), following the last-mentioned Full Bench decision, held that a mortgagor who had obtained a decree for possession of the mortgaged property on the ground that the mortgage has been satisfied, but allowed the execution of the decree to become barred by limitation, cannot maintain a subsequent suit based on his old title and be permitted to revert to the position which he held prior to the institution of the first suit and to ask for remedy by a fresh suit. This was followed in 1882 by a Division Bench of the same High Court (Straight and Mahmood, JJ.) in Anrudh Singh v. Sheo Prasad ILR 4 All. 481 in which it was held that a mortgagor who had obtained a decree for redemption, but has allowed the execution of the same to become barred by limitation cannot bring a fresh suit % to redeem the same mortgage. In Muhammad Sami-ud-din Khan v. Mnnu Lal ILR 11 All. 386, a Division Bench of the same High Court (Straight and Broadhurst, JJ.) in 1889 held that the Full Bench decision in Sheik Goolam Hoosein v. Mussumat Alla Rukhee Beebee 3 N.W.P.H.C.R. 62 was not binding since the passing of the Transfer of Property Act, and a second suit for redemption was decreed. I need hardly say that there is nothing in the Transfer of Property Act which militates against the authority of the Full Bench decision, if it was good law-as in my opinion it was-before the Transfer of Property Act. But if the decision in Muhammad Sami-ud-din v. Mannu Lal ILR 11 All. 386 was based, as apparently it purports to be, on the ground that the former suit for redemption was premature inasmuch as, at the date of the former suit, the usufruct had not liquidated the mortgage debt and that therefore the term of the usufructuary mortgage had not expired, the decision would probably be right. The same High Court (Edge, C.J., and Burkitt, J.) in David Ray v. Bagi-ud-din ILR 19 All. 202 after reviewing all the previous decisions of that Court, as well as the decisions of the High Courts of Madras and Bombay, held that a mortgagor, whether under a simple or usufructuary mortgage, who had obtained a decree for redemption and allowed such decree to lapse by reason of his not paying the decretal amount within the time limited for payment by the decree, cannot subsequently bring a second suit for redemption of the mortgage in respect of which such infructuous decree had

been obtained. The Full Bench decision of the same Court in 1871 was approved and followed as also the decision of the Bombay High Court in Maloji v. Sagaji ILR 13 Bom. 567. The decision in Muhammad Sami-ud-din v. Mannu Lal ILR 11 All. 386 was dissented from, as also the decisions of this Court in Sami v. Somasundram ILR 6 Mad. 119, Periandi v. Angappa ILR 7 Mad. 423, and Ramunni v. Brahma Dattan ILR 15 Mad. 366, on the ground that "the view of the law to be found in those cases is not supported by the law as administered in such matters in England or the law as enacted in the CPC or the Transfer of Property Act," and that the Full Bench decision in 1871 "was not affected by the Transfer of Property Act and is in harmony with that Act and is perfectly sound law." It was further held that the "allowance of a second suit for redemption would be to go contrary to the principle of Section 244, Civil Procedure Coda, and that the fact that a mortgagor has failed to comply with his decree for redemption within time cannot give him a fresh cause of action."

33. The question was again considered by a Division Bench of the same High Court (Strachey, C.J., and Knox, J.) in 189

