A MOHD. ABDUL KHADER MOHD KASTIM AND ANR.

v.

PAREETHIJ KUNJU SAYED AHAMMED AND ORS.

NOVEMBER 5, 1996

B [M.M. PUNCHHI AND MRS. SUJATA V. MANOHAR, JJ.]

Code of Civil Procedure, 1908 :

Order 34, Rule 7—Preliminary decree in redemption suit—Compliance
C *with terms of—Limitation—Court not fixing any time limit for deposit of redemption money—Held, plaintiff was required to deposit the redemption money, payable forthwith and, in any case, within the statutory period of six months—The Court instantly may have omitted to prescribe the time for payment under the preliminary decree but that time in no case could exceed six months from the date of passing the decree—Plaintiff has to suffer for*
D *his neglect.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7831 of 1995.

From the Judgment and Order dated 1.9.88 of the Kerala High Court
E in C.R.P. No.133 of 1983.

G. Vishwanatha Iyer and A. Raymond, (S. Balakrishnan) for M.K.D. Namboodiri for the Appellants.

F C. Seetharamaih, (Ramesh Babu M.R.,) for M.A. Firoz for the Respondents.

The following Order of the Court was delivered :

G The suit property was under a usufructuary mortgage. The appellant was the mortgagor thereof. The mortgage money was Rs. 18000. In the suit for redemption instituted by the appellant redemption was sought on payment of Rs. 18,000. On November 22, 1960, the trial court passed a preliminary decree in the following terms:

H "In the result, the plaintiff is given a preliminary decree for

redemption of the plaint property on deposit of the mortgage amount and value of improvements, if any, that may be fixed in the final decree. The plaintiff is allowed to recover mesne profits at the rate of Rs.200 per mensem from the date of deposit of the redemption price. First defendant will apply for the issue of a commission to assess the value of improvements. He will apply within one month from this date. The parties will bear their costs"

The said decree was confirmed in appeal on 16.11.1965. It was claimed that the decree of the trial court has merged therein and therefore the limitation for all purposes started from the date of the appellate court's order. The appellant claimed that the preliminary decree was deficient in as much as no time had been fixed for the appellant depositing the redemption money and that in the nature of things incomplete since the extent of the claim of the mortgagee—respondent relating to improvements had yet to be ascertained. On that basis it was claimed that since the decree had not determined the final amount payable as in terms of Order 34 Rule 7, the decree could not be called a preliminary decree at all and was rather a decision preparatory to a preliminary decree. Therefore there was no bar for the Court to pass another preliminary decree. Taking shelter under these arguments time was sought from the Court within which the redemption price could be termed as payable. The trial court dismissed the application for ascertainment of time and the High Court confirmed that view, which has given rise to this appeal.

The terms of the decree ex facie are clear. Its direction above extracted can be divided into three parts. Firstly, the plaintiff (the appellant herein) is given a preliminary decree for redemption of the property on deposit of the mortgage amount. Secondly, on the appellant depositing the redemption price, he would be entitled to recover mesne profits at the rate of Rs.200 per mensem till possession of the mortgaged property was delivered to him. Lastly if there be any improvement caused by the dependent—mortgaged then he was required to lay a claim within the time fixed and apply for appointment of a commission to assess the value of the improvement. And if there be any improvement and its value ascertained then the same was payable by the appellant at the time of passing of the final decree. Evidently, all these obligations and counter-obligations were separate in nature and the plaintiff—appellant was required on his part to deposit the redemption money which was equivalent to the mortgage money, ascertained at Rs.18,000 in the plaint, payable forthwith, and in any case within the statutory period of six months provided under Order

A 34 Rule 7 C.P.C. The Court instantly may have omitted to prescribe the time for payment under the preliminary decree but that time in no case could exceed six months from the date of the passing of the decree. If the Court had failed to mention the period then the plaintiff-appellant was all the same required to make payment within the permissible period of six months unless extended by the Court for reasonable cause shown. Here no
B application was made for extension and for a good cause. Rather it was projected that the time for payment had not arisen and unless the claim for improvement stood settled, (which claim was never preferred) the occasion for payment had not arisen. We think that the appellant was in error in reading the terms of the decree in this manner and therefore has to suffer for his neglect. The terms of the decree say otherwise.

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For the foregoing reasons we find no merit in this appeal and the same is accordingly dismissed.

R.P. Appeal dismissed.