that the amount of the incumbrance on the land was fixed once and for all by the decree of the 13th February, 1889 and that since it was held in the judgment upon which that decree was based that no future interest was to be allowed on the amount decreed, the respondents were not entitled to claim any interest after the date of the decree in question, is obviously untenable. As the decree was not executed within the period of limitation, it ceased to have any legal effect after the expiry of the period of limitation, so far as the amount of the incumbrance on the land was concerned; and the fresh suit for redemption which has been brought by the present respondents is maintainable, according to the uniform practice of the Courts in this Province, on the basis of the original mortgage-deeds, and not on the strength of the decree dated the 13th February, 1889. If the appellants had the option of instituting a second suit for redemption, as according to the rulings of this Court they have, long after the decree of the 13th February, 1889 ceased to be executable, it is obviously erroneous to say that the amount of the incumbrance on the land remains always the same as that fixed by the said decree. That decree having ceased to operate between the parties, so far as regards the right of the mortgagors to recover possession of the land on payment of Rs. 3,404-3-0, it must be left out of consideration in the present suit; and the amount of the incumbrance on the land must be determined afresh on the basis of the mortgage-deeds on the strength of which redemption is sought to be effected by the mortgagors.

Reference was made in argument to certain recitals contained in a registered deed of sub-mortgage, dated the 18th June, 1900, and a registered deed of sale, dated the 4th September, 1908, executed by the predecessors-in-title of the respondents, and it was urged that those recitals amounted to admissions to the effect that the mortgage-debt had been fixed once and for all by the decree of 13th February, 1889 at Rs. 3,404-3-0. As pointed out by the learned Divisional Judge, these alleged admissions do not amount to an estoppel and they were the result of a misconception of the legal position on the part of the mortgagees.

We have no hesitation in agreeing with the Courts below that the amount due to the respondents on the footing of the mortgage-deeds of 1871, 1872 and 1879 is not less than Rs. 6,987; and we accordingly maintain the decree of the lower Appellate Court and dismiss this appeal with costs.

R.M./R.K.

*Appeal dismissed.*

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## A. I. R. 1915 Lahore 127

SCOTT-SMITH, J.

*Mahomed Ali*—Plaintiff—Appellant.

v.

*Mir Haidar* and *another*—Defendants—Respondents.

Second Appeal No. 1812 of 1912, decided on 22nd March, 1915, from the Decree of Divnl. Judge, Sialkot, dated 6th August, 1912.

**(a) Civil P. C. (5 of 1908), O. 2, R. 2—Bar under O. 2, R. 2—Conditions necessary.**

A second suit is not barred by the provisions of O. 2, R. 2 of the Civil Procedure Code, unless the same cause of action is to be found within the four corners of the plaint in the first suit. [P. 128, C. 1.]

**(b) Civil P. C. (5 of 1908), O. 2, R. 2—Suit to establish reversionary rights—Subsequent suit for possession held not barred.**

Where, a widow sold her husband's house to the defendant and the husband's brother sued for and obtained a decree that the sale could not affect his reversionary rights in half of the house after the widow's death and then sued for possession of the other half:

*Held*, that the act of the widow in selling the house, though a single act, gave rise to two distinct causes of action being an infringement of two distinct rights possessed by the plaintiff and, therefore, the second suit was not barred by O. 2, R. 2 of the Civil Procedure Code. [P. 128, C. 1.]

*Govind Das* for *Mul Chand*—for Appellant.

*Umar Bakhsh* for *Muhammad Iqbal*—for Respondents.

**Judgment.**—The facts of the case out of which this appeal arises sufficiently appear from the judgments of the Courts below and are briefly as follows:—*Must.* Hakim Bibi, widow of Sher Ali, sold her husband's house to Dr. Mir Haidar, defendant-respondent. The plaintiff, Muhammad Ali, present appellant, who is the brother of Sher Ali, brought a suit for a declaration that the sale by the widow of half of the house would not

affect his reversionary rights after her death. In the plaint in that suit he expressed the intention of bringing another suit for possession of the other half of the house, which he said belonged to him. In that suit he was given a decree that the sale would not affect his reversionary rights in half of the house after the death of the widow.

He has now brought the present suit for possession of the other half of the house and the lower Appellate Court has dismissed it, holding it as barred by the provisions of O. 2, R. 2, Civil Procedure Code. The plaintiff has filed a second appeal to this Court.

The learned Divisional Judge in his judgment says that the two defendants gave the plaintiff only a single cause of action, *viz.*, the sale and the transfer of possession of the house as a whole. It appears to me that though a part of the cause of action in the present case is the same as in the previous one, the whole cause of action is not the same. In the former case the cause of action was the alienation of the house in which, it was alleged, the widow had only a life-interest, the alienation not having been made for valid necessity. In the present case the cause of action is the sale coupled with the entry of the vendee, Mir Haidar, into possession. In the former suit it was not necessary to allege that the vendee had taken possession as that fact was not an essential part of the plaintiff's cause of action. In the present case Mir Haidar's entry into possession is an essential part of the cause of action. It has been held that a second suit shall not be barred unless the same cause of action is to be found within the four corners of the plaint in the first suit, and I am clear that the whole of the plaintiff's present cause of action is not to be found within the four corners of the plaint in the previous suit. Bhagat Gobind Das, for the appellant, has cited *Khairati* v. *Akko* (1), in which it was held that a previous suit for declaration in regard to a sale by a widow did not bar a subsequent suit for pre-emption. It was pointed out in that case that the act of the widow was an infringement of two distinct rights possessed by the plaintiffs, *viz.*, their right as reversionary heirs of the widow's husband and their right of pre-emption: although the act of the widow in selling the house was a single act, it really gave rise to distinct causes of action, upon which separate suits comprising distinct subject-matters might be brought. Similarly in the present case the act of *Must.* Hakim Bibi in selling the house was an infringement of two distinct rights possessed by the plaintiff, (1) his right as reversionary heir of the widow's husband in half the house, and (2) his right as proprietor in the other half of the house. The act of the widow in selling the house was a single one, but it gave rise to two distinct causes of action. I am, therefore, clear that the present suit is not barred by O. 2, R. 2 of the Civil Procedure Code. The appeal is accepted, and the order of lower Appellate Court being set aside, the appeal is remanded thereto under O. 41, R. 23, Civil Procedure Code, for re-decision. Stamp in this Court will be refunded and the other costs will be costs in the cause.

R.M./R.K.

*Appeal accepted.*

(1) (1882) 108 P. R. 1882.

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## A. I. R. 1915 Lahore 128

KENSINGTON, C. J. AND RATTIGAN, J.

*Indar Singh*—Plaintiff—Appellant.

v.

*Kartar Singh* and *others*—Defendants—Respondents.

Second Appeal No. 897 of 1912, decided on 29th June, 1914, from the Decree of Divnl. Judge of Hoshiarpur, dated 22nd April, 1912.

**Registration Act (16 of 1908), S. 17—Compromise—Deed.**

A deed of compromise which gives effect to some arrangement arrived at between parties about a certain estate is compulsorily registrable. 28 Bom. 364, ref. to. [P. 129, C. 2.]

*Rambhaj Datta*—for Appellant.

*Sheo Narain*—for Respondents.

**Judgment.**—To make this case clear the material portion of the pedigree concerned is reproduced as follows:—