

1946

Present : Jayatileke and Rose JJ.

AHAMADULEVVEPODY, Appellant, and UTHUMLEVVE,
Respondent.

265—D. C. Batticaloa, 530.

*Contract—Mortgage—Loan of paddy—Condition for redemption of mortgage—
Return of paddy or its value at date of demand—Computation of sum
necessary for redemption of mortgage.*

Plaintiff borrowed a certain quantity of paddy worth Rs. 500 agreeing to return that quantity or to pay its market value at the time when demand was made. He executed a usufructuary mortgage bond to secure the loan.

In an action brought by plaintiff to have the mortgage bond redeemed by payment of money—

Held, that the sum required for redemption was the value of the paddy at the date of the action, although it had risen considerably after the execution of the mortgage and amounted to Rs. 2,025.

A PPEAL from a judgment of the District Judge of Batticaloa.

S. Nadesan (with him *N. Nadarasa*), for the defendant, appellant.

C. E. S. Perera (with him *T. B. Dissanayake*), for the plaintiff, respondent.

Cur. adv. vult.

January 29, 1946. JAYTILEKE J.—

On August 4, 1939, the plaintiff borrowed from the defendant 45 avanams of paddy of the value of Rs. 500 promising to return it or to pay its value on demand. He executed a mortgage bond hypothecating a field called Kuru Kalaikadu to secure the defendant. P 1 *inter alia* provides as follows :—

- (1) That the defendant should have the right to take the produce of the field that was hypothecated until P 1 was redeemed.
- (2) That the plaintiff should pay the debt and redeem the bond on demand.
- (3) If the plaintiff failed to redeem the bond on demand the defendant would have the right to recover from the plaintiff the quantity of paddy lent by him or its value at the current market price at Puliantivu at the time.

The defendant entered into possession of the field hypothecated to him after the execution of P 1 and is still in possession. It was admitted by both parties that the price of paddy rose considerably after the execution of P 1, and that at the date of the institution of the action the price was Rs. 45 per avanam. The plaintiff instituted this action to have P 1 redeemed on payment of Rs. 500, which was the price of the paddy at the date of the execution of P 1. The defendant contended that he was entitled to the return of the 45 avanams of paddy lent by him or to the payment of its value at the date of the action, namely, Rs. 2,025. The trial Judge held that the rights of the parties must be determined as they stood at the date of the execution of P 1 and entered judgment for the plaintiff as prayed for in the plaint. I think the trial Judge was wrong in his conclusion on this point. In my view this case falls to be decided simply and solely upon the perfectly plain words of the bond. We are not to make a new agreement for the parties or to speculate how they would have dealt with the matter if they had anticipated a rise in the price of paddy. According to P 1 the plaintiff agreed to return the paddy or to pay its market value at the time when demand was made. He is bound by that agreement. I would set aside the judgment appealed from and dismiss the plaintiff's action with costs here and in the court below reserving to the plaintiff the right to bring a fresh action if he is so advised.

ROSE J.—I agree.

Appeal allowed.