

1933

Present : Drieberg and Akbar JJ.

MOTTE *v.* AYIDEEN.

101—D. C. Kandy, 40,608.

Mortgage action—Sale of land—Appraised value in excess of plaintiff's claim—Direction of Court not to sell below the appraised value—Mortgage of several lands—Plaintiff's right to purchase.

Where, in a hypothecary action, the land mortgaged has been valued at a sum considerably in excess of the plaintiff's claim, the Court should not give a direction that the sale should not be below the appraised value.

Where there are several lands mortgaged, the plaintiff should be allowed to purchase any one of them at a price which bears the same relation to his aggregate claim as the appraised value of that land bears to the total appraised value of the lands.

A PPEAL from an order of the District Judge of Kandy.

Garvin, for plaintiff, appellant.

Ranawake, for defendant, respondent.

December 21, 1933. DRIEBERG J.—

The learned District Judge amended or gave further direction regarding the decree originally entered in this action by directing that the sale should not be for less than the appraised value of the land. It appears that the land has been valued at a sum considerably in excess of the plaintiff's claim. In my opinion a provision such as this in these circumstances in a mortgage decree is not reasonable, and it may even result in making the decree wholly unworkable. For what would happen if the mortgage-creditor had not the money to meet the excess of the appraised value over his claim and if there were no other purchasers?

The learned Judge however was right in stating that it was beyond his power to make any amendment in the decree after it had been the subject of an appeal to this Court, and the plaintiff's appeal against the refusal of the Judge to alter the decree must fail. But the plaintiff has brought this matter before us for revision. We set aside the directions regarding the sale being for not less than the appraised value made by the learned Judge on September 6, 1932. The original decree of March 22, 1932, will stand but provision has to be made for the fact that there are 32 lands which are the subject of this mortgage and it is possible that they may be sold separately. The decree makes proper provision for the sale of all lands together, in which case the plaintiff cannot purchase these lands for less than the full amount of his claim and interest. Provision, however, has to be made as I said for the sale of these lands separately, and we direct that in such cases the plaintiff, if he desires to purchase any one of these lands, can only do so for a price which bears the same relation to the

whole of his aggregate claim as the appraised value of that land bears to the total appraised value of all the lands, and he will be entitled to credit for the amount of that purchase price.

The learned District Judge will embody these directions in the decree of March 22, 1932. The appellant will pay to the respondent the costs of this appeal. We make no order regarding the costs of the application for revision.

AKBAR J.—I agree.

Set aside.
