

1863.

NĀ'RA'YAN  
BĀ'BA'JI

v.

GANGA'RA'M  
KRISHNA'JI  
et al.*Shāntārām Nārāyaṅ* for the special appellant.*Dhirajlāl Mathurādās* for the special respondent.

PER CURIAM:—The Court considers that the lower courts were in error in applying the Hindú Law of "*Dāmdupat*" to mortgages, this Court having held on several occasions that it did not apply to mortgages. The decree of the Acting Assistant Judge is, therefore, reversed, and the case remanded for an account to be taken of the principal sum due under the mortgage bond No. 12, and also of interest according to the terms of the said mortgage bond, to the date of the filing of the suit, on the sum agreed on; and further of interest, at the same rate, on the whole of the principal, from the date of filing the suit to that of taking the account; and that an account be taken of the rents and profits from the date of possession being given of the mortgage property to that of taking the account.

If a balance be found due by the plaintiff to the defendant, the lower appellate court will pass a decree directing the plaintiff to pay the same within six months from the date of decree, with interest at the rate of nine per cent. per annum, to be for ever foreclosed; if no balance be found due by the plaintiff, the Court is to direct that the property be forthwith returned to him.

*Decree reversed, and suit remanded.*

*Referred Case.*

Oct. 8.

BAJI DEV ..... *Plaintiff.*  
SADA'SHIV BHA'ISHANKAR ..... *Defendant.*

*Mámlatdár—Power to break open doors—Act V. of 1864 (Bombay).*

A Court authorised under Act V. of 1864 (Bombay) to give immediate possession of lands and premises has the power to direct the breaking open of a door when necessary to give effect to its decree.

IN this case the Mámlatdár of Ahmod, in the Súrat District, having ordered that immediate possession of certain property should be given to the applicant, under Bombay Act V. of 1864, carried out the decision by deputing a person forcibly to break open the door of the house in dis-

pute. The Magistrate of the District, T. C. Hope, having doubted the legality of the Mámlatdar's procedure, referred the case for the consideration of the High Court.

1868.  
BA' DEV  
v.  
SADA'SHIV  
BHA'ISHANKAR.

PER CURIAM (NEWTON and TUCKER, JJ.) :—The Court is of opinion that a Court authorised, under Bombay Act V. of 1864, to give immediate possession of lands and premises, has the power to direct the breaking open of a door of a house, when it may be necessary for the purpose of giving effect to its order.

*Special Appeal No. 622 of 1867.*

Oct. 9.

BA'LA'JI NA'RJI.....Appellant.

BA'BU DEVLII .....Respondent.

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*Mortgage—Redemption Suit—Failure to prove Sale—Proof—Presumption.*

In a suit for redemption, in the absence of any proof of a mortgage by the plaintiff, the existence of such a transaction between the parties cannot be assumed, in consequence of the failure of the defendant to establish an alleged sale.

Very slight *primó facie* proof on the part of the plaintiff would suffice to shift the entire burden of proof on the defendant, but in its absence a plaintiff seeking to redeem cannot be relieved of the burden.

THIS was a Special Appeal from the decision of C. B. Izon, Joint Judge of the Konkan at Ratnágiri, in Appeal No. 615 of 1866, reversing the decree of the Munsif of Vengurlá.

The Special Appeal was heard before TUCKER and WARDEN, JJ.

*Ganesh Hari Patvardhan* and *Vishvanáth Govind Cholkar* for the special appellant.

*Dhirajlál Mathurádas* for the special respondent.

The facts sufficiently appear from the following judgment of the Court, delivered by

TUCKER, J. :—This was a suit by the plaintiff for the redemption of a particular field, which it was alleged had been mortgaged by the father of the plaintiff to the defendant for Rs. 5 in the year 1848.