

The Subordinate Judge held the mortgage-deed proved, and awarded the plaintiff possession of the mortgaged land, together with Rs. 100 as compensation for the crop removed by the defendant.

In appeal, the District Judge remanded the case to the First Court for its trial on the two issues: first, whether the plaintiff had obtained possession of the land under his mortgage-deed; and, secondly, whether he had been subsequently forcibly turned out of it by the defendant. On remand, the Subordinate Judge found that the defendant had dispossessed the plaintiff after he had been put in possession of the land as mortgagee. He, accordingly, made a decree in favour of the plaintiff for possession of the mortgaged property until satisfaction of the mortgage-debt, and awarded Rs. 100 as damages for loss of his crop. This decree was affirmed by the District Judge on appeal (28th June, 1880).

The defendant thereupon appealed to the High Court on the 2nd October, 1880.

G. R. Kirloskar appeared for the appellant (defendant).

Shivram V. Bhandarkar (for *Shantaram Narayan*) took a preliminary objection on behalf of the respondent (plaintiff), that as the suit was one for possession under s. 9 of the Specific Relief Act I of 1877, no appeal lay to the High Court. The objection, however, was not pressed.

JUDGMENT.

The following is the judgment of the Court delivered by

WESTROPP, C.J.—Assuming for the moment, without in any way deciding, that the mortgage and possession under it were fraudulently obtained by the plaintiff Ramji, the defendant [448] Sayaji's proper course was to have brought his suit to have the mortgage set aside, and possession restored to him. He had not any right to dispossess the mortgagee without the intervention of a Court of Justice having jurisdiction for the purpose. The case being so clear on the merits, we have not considered the preliminary point as to whether the appellant was entitled to an appeal, and on that point we give no decision.

We affirm the decree with costs.

Decree confirmed.

5 B. 448.

APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice,
and Mr. Justice Birdwood.*

BHULJI BECHAR (*Decree-holder*) v. BAVAJI DAJI AND OTHERS
(*Judgment-debtors*). * [1st March, 1881.]

The Broach and Kaira Encumbered Estates Act XIV of 1877, s. 19—"Suit"—Applications for execution—Limitation.

The term "suits" in the last paragraph of s. 19 of Act XIV of 1877 includes application for execution of decrees.

UNDER s. 617 of the Civil Procedure Code (Act X of 1877), Rao Sahab R. K. Desai, Subordinate Judge of Borsad, stated the following case, with his opinion thereon, for the decision of the High Court:—

"The decree-holder Bhulji Becharadas obtained a decree in suit No. 1507 of 1875, for Rs. 17-1-0 and costs, on the 27th September, 1875,

* Civil Reference No. 4 of 1881.

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against the deceased, Bawaji Daji, and applied for the execution of the same on the 4th April 1876 and the 5th April 1877. But both the applications appear to have been dismissed, on the ground of the failure of the decree-holder to point out the property of the judgment-debtor to be attached.

"On the 6th March 1879, the provisions of Act XIV of 1877, were made applicable to the estate of the judgment-debtor, Bawaji Daji (*vide Bombay Government Gazette*, Part I, page 291); whereupon the decree-holder applied to the Talukdari Settlement Officer for the satisfaction of his decree. But the management [449] of the estate of the judgment-debtor was relinquished on the 23rd October 1880, under s. 19 of Act XIV of 1877 (*vide Bombay Government Gazette* for 1880, Part I, page 916), and, consequently, the decree-holder has been compelled to resort to this Court for the execution of his decree. The present application was presented on the 6th January 1881.

"The plaintiff's present application thus appears to be time-barred, unless the time during which the property of the judgment-debtor was under the management of the Talukdari Settlement Officer be excluded in computing the period of three years.

"The applicant claims the benefit of the last paragraph of s. 19 of Act XIV of 1877, which runs thus:—'In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued, shall be excluded.'

"A question thus arises, whether the term 'suits' includes applications for executions of decrees, so as to extend thereto the benefit provided by the aforesaid paragraph.

"In the case of *Jiwansing v. Sarnamsing* (1) the majority of the Full Bench of the Allahabad High Court has held that applications for execution of decrees are not 'suits' within the meaning of s. 15 of Act IX of 1871. But in the case of *Hurro Chunder Roy v. Shoorodhonee Debia* (2) the Calcutta High Court has ruled that the term 'suit' includes an application for the execution of a decree.

"The reasons given by the majority of the Full Bench for their decision in the case of *Jiwansing v. Sarnamsing*, above referred to, do not, I beg to submit, apply to the present case, inasmuch as no distinction appears to have been made by the Legislature between suits, appeals, and applications, in enacting the provisions of s. 19 of Act XIV of 1877.

"The intention of the Legislature, so far as it can be gathered from the last two paragraphs of s. 19 of Act XIV of 1877 taken together, was, I respectfully submit, to include applications for execution of decrees within the term 'suits.' But as the several High Courts have placed different meanings upon the term 'suits,' I deem this reference necessary.

[450] "My opinion on the question hereby referred, is in the affirmative."

The reference was considered by the High Court on the 1st March 1881.

There was no appearance of parties.

The following is the decision of the Court:—

JUDGMENT.

Per Curiam.—The Court concurs in the opinion of the Subordinate Judge.

(1) 1 A. 97.

(2) 9 W.R. C. R. 402.