

*Nobocoomar Mookhopadhaya v. Siru Mullick*<sup>(1)</sup> and *Gauri Shankar v. Surju*<sup>(2)</sup>

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GANESH  
KRISHN  
v.  
MADHAVRAY  
RAVJI.

The decrees of the Court below are amended, and the claim allowed in full for Rs. 750.

The defendant must bear all costs throughout.

*Decree amended.*

(1) I. L. R., 6 Calc. 94.

(2) I. L. R., 3 All. 276.

## APPELLATE CIVIL.

*Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Birdwood.*

LAKHMICHAND MANSA'RA'M, PLAINTIFF, v. ARJUNA BIN RA'MJI,  
DEFENDANT.\*

March 1.

*The Dekkhan Agriculturists' Relief Act (No. XVII of 1879), Section 44—Agreement of compromise.*

Under section 44 of Act XVII of 1879 the plaintiff presented to the Subordinate Court of Talegaon an agreement compromising the amount of a decree obtained by the plaintiff against the defendant in the Small Cause Court at Poona. The agreement stipulated that the plaintiff was to receive, in full satisfaction of the amount of the decree (which was for Rs. 59-15-1), the sum of Rs. 40 to be paid by yearly instalments of Rs. 4 each, and that, in default, the plaintiff was to recover the whole amount of the decree by executing it. The Subordinate Judge refused to file the agreement, being of opinion that it did not finally dispose of the matter. The case being referred to the High Court,

*Held* that the agreement was one finally disposing of the matter within the meaning of section 44 of Act XVII of 1879, and that, therefore, the Subordinate Judge of Talegaon was bound to receive it, and to proceed as directed in that section.

UNDER section 617 of the Civil Procedure Code (Act X of 1877) and section 36 of Act XVII of 1879, Dr. A. D. Pollen, Special Judge under the Dekkhan Agriculturists' Relief Act, referred this case for the orders of the High Court. The following are the facts of the case as stated by Rao Saheb A. G. Bhawe, Subordinate Judge of Talegaon, who refused to file the agreement presented by the plaintiff :—

“This is an agreement compromising the plaintiff's claim against the defendant under a decree of the Small Cause Court at Poona. The plaintiff has thereby agreed to accept, in full satisfaction of

\* Civil Reference, No. 7 of 1881.

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the amount recoverable under the decree, which is for Rs. 59-15-1, a sum of Rs. 40 to be paid by annual instalments of Rs. 4 each, and that, in default of regular payment of instalments by the defendant, the plaintiff has a right to recover the whole amount of the decree by executing the same.

“ The question is, whether such an agreement is one finally disposing of the matter within the meaning of section 44 of the Dekkhan Agriculturists' Relief Act (No. XVII of 1879).

“ I am of opinion that it is not. It is a contingent and conditional compromise, and it restores the plaintiff to the same situation in which he would have been if no compromise was effected upon the happening of the contingency or the breach of condition imposed upon the respondent. The debtors generally are so poor that in 75 out of 100 cases the breach must take place, and, practically, the compromise has merely the effect of suspending the operation or execution of the decree for a short time. I do not think that section 44 was intended to apply to such agreements. It directs only those agreements to be filed which finally dispose of the matter in question.

“ I, therefore, refuse to file this agreement.”

In referring the case to the High Court the Special Judge observed :—

“ The Subordinate Judge of Talegaon, in charge of the Poona First Class Subordinate Judge's Court, has sent to me for perusal his proceedings in the matter of an agreement sent to his Court under section 44 of the Dekkhan Agriculturists' Relief Act, from which it appears that he, of his motion, refused to file the agreement.

“ This order of refusal appears to me to be illegal and without authority; and I have, therefore, the honour to forward the proceedings for such notice as the Honourable the Chief Justice and the Judges of the High Court may think fit to take of them.

“ It seems to me that the agreement was a very fair and proper one, decidedly advantageous to the judgment-debtor; and that I may mention that agreements of a similar nature are very common.”

There was no appearance of parties in the High Court.

The following is the judgment of the Court:—

WESTROPP, C.J.—The Court is of opinion that the agreement was one finally disposing of the matter within the meaning of section 44, Act XVII of 1879, and, therefore, that the Subordinate Judge of Talegaon was bound to receive it, and to proceed as directed in the above-named section.

Whether the Special Judge is right in supposing that the agreement is one for the benefit of the judgment-debtor, would depend to some extent on the question whether the decree, the subject of it, was or was not barred by limitation at the time of the agreement. See clause 3, sec. 25, of the Indian Contract Act IX of 1872.

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## APPELLATE CIVIL.

*Before Mr. Justice Melvill and Mr. Justice Kemball.*

KALIDAS (ORIGINAL DEFENDANT), APPLICANT, v. VALLABHDA'S *September 27.*  
(ORIGINAL PLAINTIFF), OPPONENT.\*

*Jurisdiction—Court of Small Causes—“Damages on account of rent”—Suit for use and occupation—Trespass—Ejectment—Mesne profits.*

The plaintiff obtained a decree declaring him entitled to a certain house. He thereupon gave to the defendant, who was in occupation, notice to pay him rent, and on default of such payment he sued the defendant in the Court of Small Causes to recover “damages on account of rent.”

*Held* that the suit was not maintainable in a Court of Small Causes, which could not be used as a medium for ejecting, by indirect means, a person in possession of immovable property.

•*Held*, also, that the plaintiff's suit was only maintainable as a suit for damages on account of trespass, and in such a suit it would be necessary for the plaintiff to prove possession prior to the trespass, or to have obtained a decree in ejectment which would relate back to the date of the trespass. The plaintiff had obtained nothing more than a decree declaring him to be the owner of the house; but this did not necessarily import a right to immediate possession, nor could the plaintiff be allowed to derive from it all the benefit which he might derive from a decree in ejectment.

THIS was an application for the exercise of the High Court's extraordinary jurisdiction against a decree passed by Khan Bahadur Cursetji Manekji Cursetji, Judge of the Court of Small Causes at Ahmedabad.

\* Extraordinary Application, No. 99 of 1881.