

1883

FAKIRCHAND
MOTICHAND
v.
MOTICHAND
HURRUCK-
CHAND.

able properties in the plaint mentioned for the payment of the debts of the said Motichand Nathoo vested in the Official Assignee; and that such right was not divested on the death of the said Motichand Nathoo." And as on this finding of law the case may be disposed of, I give my judgment for the defendant with costs.

Attorneys for the plaintiff.—Messrs. *Macfarlane and Edgelow*.
Attorneys for the defendant.—Messrs. *Graigie, Lynch and Owen*.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

SHRI SHAILAPA HADLAPA (PLAINTIFF), APPLICANT, v. BALAPA
LOKANNA AND OTHERS (DEFENDANTS), OPPONENTS.*

1883
July 11.

The Code of Civil Procedure, Sec. 43—Bond with alternative conditions for repayment of loan—Decree for interest—Second suit for further interest.

A bond provided for the repayment of a loan with interest by a stated time. In default of payment by that time it was provided that the loan might be added to an existing mortgage for a term of years, and repaid at the end of the term, together with the mortgage-debt. After the expiration of the time fixed for the repayment of the loan the obligee sued and obtained a decree for the interest which had accrued due at the date of the suit. He now sued for the further interest which had since become due.

Held that the second suit was not barred by section 43 of the Code of Civil Procedure, for that the first suit being for interest merely, and not for principal and interest, which were then both due, the plaintiff must be taken to have elected, under the bond, to add the principal sum to the previously existing mortgage-debt, in which case he forfeited nothing by suing merely for arrears of interest as they became due.

THIS was an application, under the High Court's extraordinary civil jurisdiction, for the reversal of the decree of C. F. H. Shaw, Judge of Belgaum, confirming the decree of Rav Saheb Venkatarav Lakshmaya, Subordinate Judge of Chikodi.

The first defendant, Balapa, with the other two defendants as securities, passed to the plaintiff on the 28th of August, 1874, a bond for Rs. 400, with interest at a certain rate, and agreed that

* Extraordinary Civil Application, No. 3 of 1883.

the amount, both principal and interest, should become recoverable on the 5th of April, 1875. Balapa further agreed as follows:—

“I have, under bond dated the 15th of April, 1871, mortgaged to you, for Rs. 1,100, survey No. 345 for a term of sixteen years. Until that bond is paid off, I shall continue paying you every year the interest upon Rs. 400, the amount borrowed on the present bond. When redeeming survey No. 345 I shall pay you the said sum of Rs. 400 also, with whatever interest may remain unpaid. I will not redeem that land before I pay this sum. You shall have your right to that land till the payment of this sum of Rs. 400. I will not sell or mortgage that land in the meanwhile.”

In 1880 the plaintiff sued the defendants upon this bond to recover Rs. 300 as interest which had accrued on the bond, although the total amount of principal and interest had become recoverable according to the condition contained in the first part of the bond, and obtained a decree as prayed for. The plaintiff now (in 1881) sued to recover Rs. 200 for further interest which had accrued since.

The defendants contended that the claim was barred by section 43 of the Code of Civil Procedure. The Courts below upheld their contention, and rejected the plaintiff's claim. The plaintiff, therefore, applied to the High Court.

Gokaldas Kahandas for the applicant.

Manekshah Jehangirshah for the opponents.

The judgment of the Court was delivered by

WEST, J.—When the bond in this case fell due, the creditor might either have sued for the whole sum due within six years (it being a registered instrument), or, as the bond provided that, in default of payment, the principal sum should be added to an existing mortgage-debt, the creditor might prefer that it should be thus secured, and forego his right to immediate repayment. All that could be said was that he could not take advantage of both alternatives. Now, when he sued for three-years' arrears of interest, as provided in the second branch of the engagement, without suing for the principal then long overdue, he conclu-

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sively elected to take advantage of the second alternative engagement, and he could then no longer sue,—i. e., he had no longer a cause of action—on the first alternative. He had made a conclusive election of one out of the two contracts embraced in the bond. He got a decree, which implied that the obligation was reduced to this, that the interest should be paid periodically, while the principal and any interest in arrears stood as a charge against the mortgaged property. It is a sound principle of construction to give effect to every part of an instrument; and here an alternative being provided, the intention in framing it would plainly be defeated if it were held that, in seeking a remedy on the partial contracts constituted by that alternative, the creditor lost his further remedy altogether. As the interest fell due under the second alternative, it might be separately sued for, that showing only an adoption of the second alternative instead of the first.

The point of limitation depends really on the one just considered. We set aside the decrees below, and direct that the suit be disposed of on the merits, with an award of costs.

Decrees set aside.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

1883
 July 21.

KONDAJI BAGAJI AND OTHERS (ORIGINAL DEFENDANTS), APPLICANTS, v.
 ANAU, WIDOW OF RANUJI, AND ANOTHER (ORIGINAL PLAINTIFFS),
 OPPONENTS.*

Dekkhān Agriculturists' Relief Act XVII of 1879, Chap. II—Jurisdiction—Value of subject-matter of suit—Honest misinformation.

An application of chapter II of the Dekkhān Agriculturists' Relief Act, XVII of 1879, by a Subordinate Judge, which would have been illegal and wrong, if the Subordinate Judge had known the subject-matter of the suit was of greater value than Rs. 100, may be sustained if he was led into applying it by honest misinformation.

The original proceedings being thus justified, a Special Judge has jurisdiction to revise them, and, if necessary, to order a new trial.

* Extraordinary Civil Application, No. 42 of 1883.