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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.

1883
July 21.

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

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

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

An application of chapter II of the Dekkhan 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.

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KONDAJI BAGAJI v. ANAU.

THIS was an application, under the extraordinary jurisdiction of the High Court, for the reversal of decree of the Subordinate Judge of Akola, in the district of Ahmednagar.

The plaintiffs, who are agriculturists, in 1880 sued to redeem a piece of land mortgaged in 1824. They alleged that the consideration for the mortgage was only Rs. 24, and that the defendants had realized above Rs. 3,000 out of the profits of the land. In September, 1881, the Subordinate Judge rejected the claim, holding the mortgage set up not proved, and the suit barred by limitation as brought ninety-seven years after 1784, the year in which he found the land in question had been mortgaged for a sum of Rs. 166 by the plaintiffs to the defendants' ancestor. Against the decree of the Subordinate Judge the plaintiffs applied to the Special Judge, who reversed the decree of the Subordinate Judge, and remanded the case for a re-trial. In the re-trial the Subordinate Judge held two documents, which he had formerly held to be forgeries, to be genuine, and came to the conclusion that there was an original mortgage in 1784 for Rs. 166, which was recognized as existing in 1824 and 1857, and kept alive by acknowledgments so as to save the suit from being barred by lapse of time. He, accordingly, decreed redemption.

The defendants thereupon applied to the High Court.

V. M. Pandit for the applicants.—The Subordinate Judge was wrong in dealing with the case under chapter II of the Dekkhan Agriculturists' Relief Act, the mortgage having been for more than Rs. 100.

The High Court granted a *rule nisi*.

Vasudev Gopal Bhandarkar, for the opponents, showed cause.—We deny that the value of the subject-matter exceeded Rs. 100; but, if it did, the suit would be cognizable by the Subordinate Judge as being within his general jurisdiction. The amount of Rs. 24 was fixed upon in good faith, and that should determine jurisdiction—*Bukshoollah Chowdry* v. *Hur Chunder Chand*(1); *Dooly Chand* v. *Nirban Singh* (2); *Janki Das* v. *Badri Nath* (2); *Gobind Singh* v. *Kallu* (4).

(1) 16 Cal. W. R., 248.
(2) 18 Cal. W. R., 261.
(3) I. L. R., 2 All., 698.
(4) I. L. R., 2 All. 778.

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The judgment of the Court was delivered by

WEST, J.—The original mortgage in this case was made in A. D. 1784. By the document No. 39, which the Subordinate Judge at first pronounced a forgery, but has now found genuine, the mortgage was recognized as existing in 1824. Again, in 1857, the document No. 18 refers to the mortgage as existing, and this document, too, overlooked in the first investigation, or not referred to in the judgment, the Subordinate Judge has now held proved. Thus, the mortgage, though it would, according to its own literal terms, have become a sale in 1794, has been kept alive by the subsequent acknowledgments, so as to prevent any bar by limitation of the present suit for redemption.

The sum originally secured by the mortgage was Rs. 166. By the document No. 39, Bagaji, father of Kondaji, a defendant in this case, not only acknowledges the existence of a mortgage, but also a reduction of the amount due on it from Rs. 166 to Rs. 24. The plaintiffs, Ranuji's widows, brought this suit to redeem the mortgage in 1880. They were obviously not then barred by limitation, unless we should pronounce the Subordinate Judge wholly wrong as to the documents Nos. 39 and 18, and we do not feel at liberty, in a case under the extraordinary jurisdiction to review his appreciation of the evidence.

The Subordinate Judge, however, it is said, wrongly applied chapter II of Act XVII of 1879 to this case, and the Special Judge afterwards in reviewing it acted without jurisdiction. The original amount of the mortgage, as already observed, was Rs. 166. The suit was brought as on a loan of Rs. 24. This is accounted for by the fact that the plaintiffs had no information to guide them, except the document No. 39; and, judging solely by that, they might very well suppose that no more than Rs. 24 was the real amount of the mortgage, and that its date was 1824. It may be a question whether the valuation of a suit for jurisdictional purposes ought to be governed by any rules of an arbitrary kind for regulating court fees and the like. The Court Fees' Act no doubt says that in a suit for redemption the amount originally advanced shall, for the purposes of the Act, determine the valuation of the suit; but in *Cotterell* v. *Stratton*(1) Molins, V.C., says the

(1) L. R., 17 q. at p. 545.

proper valuation of a suit for redemption is the amount remaining due on the mortgage, or claimed on it by the mortgagee. Hence, the mere fact that the original loan was more than Rs. 100 would not necessarily exclude the Subordinate Judge's dealing with the case under chapter II of Act XVII of 1879 even if it were a case of jurisdiction depending on the value. But it was not that; but rather the application of a particular mode of procedure where there was a general jurisdiction of the subject-matter. In such a case the remarks and the reference made by the Judicial Committee in the *Pillais'* case(1) show that a highly irregular proceeding where there is jurisdiction may be cured by agreement or even by acquiescence. In the case of *Revell* v. *Blake*(2) a County Court on a misstatement (without fraud) of a creditor exercised a jurisdiction, which, if it had known the truth, it could not have exercised. Its proceedings were pronounced valid. Hence, even where jurisdiction depends on particular facts stated, the proceedings will not be null through a mere error in stating the facts so as to found the jurisdiction, though they will be voided probably by fraud, or at any rate will be voidable against him who has practised it.

It follows that an application of chapter II of Act XVII of 1879, which would be illegal and wrong if the Subordinate Judge knew the subject-matter was of more than Rs. 100 value, may be sustained if he was led into applying it by honest misinformation. It does not appear, in the present case, that there was any fraudulent misrepresentation. Even if Rs. 24 did not represent the value of the subject-matter, the plaintiffs and the Subordinate Judge might reasonably suppose it did, and the investigation having been made under chapter II might stand, even though in the end it should come out that the value ought to have been computed at more than Rs. 100. Here the sum found actually due was nothing; the mortgage had been more than paid off. The defendants had not either informed the plaintiffs of what they had to pay, or told the Court that the value of the subject-matter exceeded Rs. 100. They must, therefore, be taken to have acquiesced in the Subordinate Judge's proceeding under Chapter II, and are bound by it.

(1) L. R., 2 I. A. at p. 233. (2) L. R., 8 C. P., 533.

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As the proceeding under chapter II is thus justified, the revisional proceedings of the Special Judge cannot be held to have been without jurisdiction. He ordered a re-trial, and this has been held with a result contrary to the one before arrived at, but not, therefore, necessarily wrong. The admission of a single member's acknowledgment made in 1857 as binding the family might be questioned on some of the decisions and supported on others; but the acknowledgment of Bagaji, No. 39, binds all his sons, and was made within sixty years of the institution of the suit.

We, therefore, discharge the rule with costs.

Rule discharged.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas

1883 *July* 18.

BAI KUSHAL AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* LAKHMA MANA (ORIGINAL DEFENDANT), RESPONDENT.*

Hindu law—Gift—Possession.

Where one of several joint-donees is already in physical occupation of the subject-matter of an intended gift, a declaration by the donor to the donee so in occupation, assented to by such donee, that he has parted with the possession in favour of the donees, converts mere occupation into possession, and amounts to a valid gift under the Hindu law.

THIS was a second appeal from the decision of S. Hammick, Assistant Judge of Surat, confirming the decree of Rav Saheb Chunilal Maneklal, Subordinate Judge of Anklesvar.

One Ruda Partap was the father of five daughters, one of whom, Kushal, appellant No. 1, was a widow, and lived with her father, and managed his lands and affairs generally. On the 11th of November, 1872, Ruda executed a deed of gift in favour of his five daughters; Ruda was old and infirm, and the time of executing the deed of gift was under the apprehension of approaching death. There was, however, no formal or actual transfer of possession of any of the lands given away by the deed, and Ruda not dying till a years afterwards they continued to be managed by Rushal,

* Second Appeal, No. 363 of 1882.