

The defendant, however, was not made a party to Harál's suit to enforce his security, and, therefore, does not lose his right of redemption, which, according to the well-established rule of Courts of Equity in England, followed in the Courts of this country, still remains open—*Ganesh Saddshiv v. Bálkrishna Gopál* <sup>(1)</sup>; *Venkata Somayazulu v. Kannam Dhora* <sup>(2)</sup>; *Bir Chunder Manikya v. Mahomed Afsarooddeen* <sup>(3)</sup>. The plaintiff, therefore, purchased the property subject to the defendant's right of redemption. Now, it is true that the plaintiff's suit is not one to foreclose the defendant, but we think we shall be only following the practice of this Court in analogous cases if we reverse the decree of the Court below and pass a decree in the same form as was adopted in *Wásudev Báláji v. Náráyan Krishna* <sup>(4)</sup>, viz., that the defendant do deliver possession to the plaintiff, but that he be at liberty to redeem by payment to the plaintiff, within six months, of the amount which would be due on the mortgage of 15th July, 1870, if the same had remained unaffected by the mortgage of 1873, or, in default, should remain for ever foreclosed. The defendant to pay plaintiff his costs throughout.

(1) Printed Judgments for 1879, p. 28. (3) I. L. R., 10 Calc., 299.

(2) I. L. R., 5 Mad., 184.

(4) Printed Judgments for 1882, p. 21.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr Justice Birdwood.*

CHATUR KUSHA'LCHAND, DECREE-HOLDER, v. MAHA'DU BHAGA'JI,  
JUDGMENT-DEBTOR.\*

1885.  
August 13.

*Dekkhan Agriculturists' Relief Act XVII of 1879, Sec. 22—Conciliation-agreement—Civil Procedure Code (Act XIV of 1882), Sec. 261—Limitation Act XV of 1877, Sch. II, Art. 179—Application for attachment of an agriculturist's property.*

A conciliation-agreement dated the 2nd October, 1880, between the decree-holder and the judgment-debtor, stipulating that the former should allow a remission of 10 rupees and the latter should execute a document for the remaining sum of Rs. 90, to be paid in 1882, was filed in Court on 20th November, 1880. In 1883 the decree-holder presented two applications for satisfaction of the agreed debt of Rs. 90 by attachment of the debtor's property, which applications were

\* Civil Reference, No. 25 of 1885.

1885.  
DULLABHDÁS  
DEVCHAND  
v.  
LAKSHMAN-  
DÁS  
SARUPCHAND.

1885.

CHATUR  
KUSHAL  
CHAND  
v.  
MAHADU  
BHAGAJI.

granted, but were not proceeded with through some default of the decree-holder. On 4th June, 1885, the decree-holder made the present application, praying that under sections 261 and 262 of the Civil Procedure Code (Act XIV of 1882) an order directing the judgment-debtor to execute a bond in terms of the conciliation-agreement might be made, or that the Court might execute one on his behalf. On reference by the Subordinate Judge under section 617 of the Civil Procedure Code Act XIV of 1882) to the High Court,

*Held*, that the applications in 1883 for attachment of the debtor's property were not "in accordance with law," being forbidden by the Dekkhan Relief Act XVII of 1879, section 22, and that the present application under section 261 of the Civil Procedure Code (Act XIV of 1882) was, therefore, too late under clause 4, article 179 of Schedule II of the Limitation Act XV of 1877.

THIS was a reference by RAV SÁHEB V. R. JOGLEKAR, Second Class Subordinate Judge of Pátas, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The facts of the case were as follow :—

"In this case a conciliation-agreement was brought about on the 2nd October, 1880, by the conciliator of Murum between the decree-holder and the judgment-debtor, its conditions being that the former should allow a remission to the extent of Rs. 10 in the sum of Rs. 100 claimed by him, and the latter should pass a document for the remaining sum of Rs. 90, making it repayable by the end of *Fálgun* of *Shake*, 1803; (19th March, 1882), with interest at one per cent. per month.

"The aforesaid agreement was filed in Court on 20th of November, 1880.

"The decree-holder subsequently presented to the Court two applications, dated respectively 11th January and 3rd April, 1883, in which he sought the assistance of the Court for the recovery of the sum of Rs. 90 by the attachment of the property of the judgment-debtor. The applications had been granted, but were disposed of for some default or other of the decree-holder.

"On the 4th day of June, 1885, the decree-holder presented a fresh application, praying that an order directing the judgment-debtor to execute a bond in terms of the conciliation-agreement might be passed, or that, in case of his refusal to do so, the Court might execute one.

"In connection with this last application the Subordinate Judge entertained doubts on the following points which he referred for the favour of decision by the High Court :—

"(1). Whether the conciliation-agreement can be regarded as one finally disposing of the matter in dispute ?

"(2). Can the two applications for execution presented by the decree-holder be regarded on the date of the presentation of the application of 4th June, 1885, to have kept the conciliation-agreement alive for the purposes of limitation ?

"(3). How the assistance sought for in the application of 4th June, 1885, is to be granted to the decree-holder ?

"The opinion of the Subordinate Judge on the first two points was in the negative ; and as to the third, he was of opinion that the Court would have to follow the provisions of sections 261 and 262, Civil Procedure Code, in granting the assistance called in by the decree-holder by his application of 4th June, 1885."

There was no appearance for the parties.

SARGENT, C. J.—The applications in 1883 for attachment of the defendant's property were not "in accordance with law," being forbidden by section 22 of the Dekkhan Agriculturists' Relief Act XVII of 1879. The present application, therefore, under section 261 of the Code of Civil Procedure (Act XIV of 1882) is too late under clause 179 of Schedule II of the Limitation Act XV of 1877.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Nánábhái Haridás and Sir W. Wedderburn, Bart., Justice.*

QUEEN-EMPRESS v. KISAN BA'PU.\*

*Indian Penal Code (XLV of 1860), Sec. 174—Summons—Disobedience.*

A man who in obedience to a summons to appear and answer a criminal charge attends a Magistrate's Court, but, finding the Magistrate not present at the time mentioned in the summons, departs without waiting for a reasonable time, is guilty of an offence under section 174 of the Indian Penal Code.

THIS was an application for the High Court's revisional jurisdiction.

\* Criminal Application, No. 242 of 1885.

1885.

CHATUR  
KUSHÁL-  
GRAND

MAHÁDU  
BHAGÁJI.

1885.

August 18.