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12 B. 684.

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## [684] APPELLATE CIVIL.

*Before Mr. Justice Birdwood and Mr. Justice Parsons.*MUKTAJI BHAGOJI AND ANOTHER (*Original Defendants*),  
*Applicants v. MANAJI (Original Plaintiff), Opponent.\**

[24th January, 1888.]

*Dekkhān Agriculturists' Relief Act (XVII of 1879), ss. 53 and 54—Special Judge—His powers in revision—Withdrawal of suit—Mistake in filing suit not a ground for withdrawal.*

A Special Judge appointed under s. 54 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is not competent, in the exercise of his revisional powers, to allow a plaintiff to withdraw his suit with liberty to bring a new one, merely on the ground that he has made some mistake in filing the suit.

THIS was an application under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

The plaintiff filed a suit for redemption under the provisions of chap. III of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The Subordinate Judge dismissed the suit, on the ground that the plaintiff had failed to prove both the fact of the mortgage and his ownership of the land in dispute.

The plaintiff thereupon applied to the Special Judge for revision of the Subordinate Judge's decision. While this application was pending, the plaintiff made another application to the Special Judge to allow him to withdraw the suit with liberty to bring a new one, on the ground that "he had committed some error in bringing the suit, and that it was now too late for him to amend the plaint." The Special Judge allowed him to withdraw the suit.

The defendants thereupon applied to the High Court under its extraordinary jurisdiction to set aside the order of the Special Judge as being *ultra vires*.

A rule *nisi* having been granted.

*Nagindas Tulsidas*, for the plaintiff, showed cause.—The proceedings before the Special Judge are a continuation of the original suit. Under s. 74 of Act XVII of 1879 the provisions of the Code of Civil Procedure (Act XIV of 1882) apply to all suits and proceedings instituted under the Act. The Special Judge has, therefore, power to allow the withdrawal of a suit under s. 373 of the Civil Procedure Code. In [685] *Gunga Ram v. Data Ram* (1) it is held that the High Court can allow a suit to be withdrawn even in second appeal. The principle of this decision applies to the present case.

*Ganesh Ramchandra Kirloskar, contra.*—Section 53 of Act XVII of 1879 does not authorize the Special Judge to allow a suit to be withdrawn after decree. The decree in the present case is not alleged to be illegal or wrong. And except on the ground of illegality or material irregularity, the Special Judge cannot, as a Court of Revision, reverse or modify the decision of a Subordinate Court.

\* Application under Extraordinary Jurisdiction No. 118 of 1887.

(1) 8 A. 82.

## JUDGMENT.

BIRDWOOD, J.—When the Special Judge appointed under s. 54 of Act XVII of 1879 calls for and examines the record of a suit under s. 53, he can legally do so only for the purpose of satisfying himself of the legality or propriety of any decree or order passed by a Subordinate Judge in any suit or other matter under chap. II, IV or VI of the Act and as to the regularity of the proceedings therein. In the present case the Subordinate Judge had rejected a suit for redemption, on the ground that the plaintiff had failed to prove the mortgage and was not the owner of the land in suit. Thereupon the plaintiff applied to the Special Judge to review the decree under s. 53 of the Act. While the application was pending, the plaintiff made another application, saying that he had “committed some error in the matter of bringing the suit,” and asking for permission to withdraw the suit, with liberty to bring a new one, as it was then too late to amend the plaint. The Special Judge granted this application. In doing so, we think, he acted without jurisdiction; for the plaintiff did not, in his second application, complain of any illegality or impropriety in the decree of the Subordinate Judge. He did not say that the Subordinate Judge had wrongly refused to allow him to withdraw the suit. He alleged merely a mistake on his own part in bringing the suit. This was not a ground which justified the interference of the Special Judge. We, therefore, make absolute, with costs, the rule *nisi* granted in this case; and, reversing the Special Judge's order, restore the decree of the Subordinate Judge.

*Rule made absolute.*

12 B. 686.

## [686] APPELLATE CIVIL.

*Before Mr. Justice Birdwood and Mr. Justice Parsons.*

MANISHANKAR PRANJIVAN (*Original Plaintiff*), Appellant v.  
BAI MULI AND ANOTHER (*Defendants*), Respondent.\*  
[14th February, 1888.]

*Minor—Act XX of 1864, s. 18—Sanction of alienation of minor's property—Civil Procedure Code (Act X of 1877), s. 462—Compromise on behalf of a minor—Mortgage—Assignment of mortgage by guardian of minor—Suit on mortgage by assignee—Proof of assignment when necessary—Consideration for assignment—Adequacy of consideration.*

Section 18 of the Minors' Act XX of 1864 applies only to persons to whom a certificate has been granted under that Act. An assignment of a mortgage, therefore, by a widow, acting as natural guardian of her minor son, but who has not obtained a certificate under the Act (XX of 1864), is not invalid because effected without the sanction of the Court.

Where a widow acting as natural guardian of her minor son assigned a mortgage which had been executed to her deceased husband for a consideration, a part of which was a sum due under a decree to the assignee.

*Held*, that such an assignment was not invalid under s. 462 of the Civil Procedure Code (Act X of 1877). Assuming that section to be applicable to the compromise of a decree, the circumstance that the compromise was voidable would only affect the consideration for the assignment by reducing its amount.

\* Second Appeal No. 755 of 1885.