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APPELLATE
CIVIL.

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The Subordinate Judge referred the following question to the High Court for its decision:—

Whether effect should be given to the bond in question, having regard to the provisions of ss. 10, 11 of Act IX of 1872?

[51] The Subordinate Judge's opinion on the point was in the affirmative.

There was no appearance for the parties.

OPINION.

PER CURIAM.—We are of opinion that the Subordinate Judge is right in holding that the bond executed to the minor is good in law, and may be sued upon.

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13 B. 51.

APPELLATE CIVIL.

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

RAGHO VINAYAK (*Original Plaintiff*), *Appellant v.* SHEIKH DAUD AND ANOTHER (*Original Defendants*), *Respondents.** [30th April, 1888.]

*Mortgage—Redemption suit—Parties to such suit—Equity of redemption, interest in, of persons related to the mortgagor.*

The plaintiff sued the defendant to redeem certain *khoti* lands mortgaged by the plaintiff's father to the defendant's uncle. The defendant objected that the separated uncle and cousins of the plaintiff should be made co-plaintiffs in the suit. These relations of the plaintiff were not joint members of the plaintiff's family at the time of the mortgage, nor did they claim any interest in the equity of redemption.

*Held*, that the plaintiff's uncle and cousins were not necessary parties. In the absence of evidence to the contrary it must be presumed that the mortgage was made by the plaintiff's father in his individual capacity. If the defendant had shown that at the date of the mortgage the plaintiff's father and uncles were undivided, it might have been presumed that the mortgage was on their behalf as well as in his own. But this the defendant had failed to do. The mortgage did not purport to have been made by the plaintiff's father as manager of the family, nor did it appear that the plaintiff's uncle and cousins claimed any interest in the equity of redemption. The mere fact of their relationship gave them no interest in it.

SECOND appeal from a decision of G. McCorkell, Assistant Judge of Ratnagiri, reversing the decision of Rav Saheb B. S. Joshi, Subordinate Judge of Dapoli.

This was a suit brought by the plaintiff against the defendant to redeem certain *khoti* lands mortgaged by the plaintiff's father in 1854-55 to the uncle of the defendant Sheikh Daud.

[52] The defendant contended (*inter alia*) that the plaintiff could not sue alone, as there were eight co-sharers of the plaintiff who ought to be made co-plaintiffs. These co-sharers were the plaintiff's uncle and the sons of another uncle, who had ceased to be members of the undivided family of the plaintiff at the time the plaintiff's father executed the mortgage of 1854-55. It did not appear that these relations ever claimed any interest in the equity of redemption.

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* Second Appeal, No. 120 of 1886.

The Court of first instance disallowed the defendant's contention and passed a decree for redemption. The defendant appealed to the Assistant Judge, who reversed the lower Court's decree, on the ground that the plaintiff's relations ought to have been made parties.

The plaintiff preferred a second appeal to the High Court.

*Hakim* (instructed by *Vasudev Gopal Bhandarkar*), for the appellant:—The lower appellate Court was wrong in holding that appellant's uncle and cousins were necessary parties. They had no interest in the property. The mortgage was an individual act of the appellant's father, not for the benefit of the family. These relations were not united with the appellant's father. Conceding, without admitting, that they are co-sharers, the appellant has a right to redeem the whole—*Norender Narain* v. *Dwarka Lal* (1). It is only in foreclosure suits that all persons interested should be joined as parties.

*Daji Abaji Khare*, for the respondents :—The other co-sharers must be made co-plaintiffs. The object of having all parties before the Court in such suits is to avoid multiplicity of suits. In *Ragho Salvi* v. *Balkrishna Sakhkram* (2) it has been held that even if there is a mortgage by one coparcener, the rest are necessary parties to the suit for redemption. The *khoti takshim* here belongs to the family, and not to plaintiff alone : therefore for the safety of the respondents the other co-sharers must be joined as parties. The effect of a decree in a redemption suit, if it is not complied with in the time given, is to foreclose, and, therefore, the same principle should govern suits for redemption and foreclosure. All parties interested must be before the Court.

## JUDGMENT.

[53] NANABHAI HARIDAS, J. :—This is a suit to redeem. The mortgage sought to be redeemed was executed in 1854-55 by the plaintiff's father to the grandfather of defendant No. 1.

The Subordinate Judge made a decree for redemption. In appeal that decree was reversed and the claim rejected by the Assistant Judge, on the ground of non-joinder of certain relatives of the plaintiff, who, he thought, ought to have been made parties to the suit.

The question we have to determine in this second appeal, therefore, is whether it was necessary to make those relations parties.

The rule on the subject is that all persons interested in the equity of redemption should be made parties, especially if the defendant insists upon it as here. See *Henley* v. *Stone* (3); *Norender Narain Singh* v. *Dwarka Lal* (1); *Ragho Salvi* v. *Balkrishna Sakharam* (2); Fisher, See 1360; Story's Eq. Pleadings, s. 185 ; and Daniell's Ch. Practice, 207 (4th ed.).

We have thus to see whether the said relations of the plaintiff are so interested or not. Those relations according to the Subordinate Judge's finding, are an uncle and some cousins, sons of another uncle. The property in dispute was originally ancestral property, and was mortgaged by plaintiff's grandfather to one Vithshet Narayanshet, from whom it was redeemed by plaintiff's father alone, who, as stated above, in 1854-55 re-mortgaged it to the father of defendant No. 1. It is not alleged that at the time of such re-mortgage the plaintiff's father was united in interest with his brothers. The plaintiff indeed alleges that a partition had taken place between them and that the land in dispute had fallen to his father's share at such partition, and there are witnesses examined in

(1) 3 C. 397 (408). (2) 9 B. 128. (3) 3 Beav. 355.

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this case who deposed to a partition having taken place, but whose statement as to the land in dispute having come to the plaintiff's father's share is not believed by the Subordinate Judge. He observes, however, that both in redeeming and re-mortgaging the plaintiff's father acted ostensibly as if he were the sole owner. It is not alleged that the plaintiff and his uncle and cousins are still joint. The mortgage does not purport to have [54] been made by plaintiff's father as manager of the family; nor does it appear that the plaintiff's uncle and cousins claim any interest in the equity of redemption. In the absence, therefore, of all evidence to that effect it could not well be presumed that the plaintiff's father effected the mortgage of 1854-55 otherwise than in his individual capacity. If the defendant had made out that the plaintiff's father and uncles were undivided at that time, it might have been presumed that the mortgage was for and on behalf of them as well as himself, but this he has failed in doing. We do not think, therefore, we should be justified in holding, from the mere fact of the relationship, that the plaintiff's uncle and cousins have any interest in the equity of redemption.

We accordingly reverse the Assistant Judge's decree, and restore that of the Subordinate Judge, the two Judges not differing as to the merits, with this modification that the three months allowed for redemption should count from the date of this decree. The costs of the suit and both appeals to be paid by defendant No. 2, the other defendants not having contested the plaintiff's claim.

*Decree reversed.*

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**13 B. 54.**

## APPELLATE CIVIL.

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

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NARU KOLI (*Plaintiff*) *v.* CHIMA BHOSLE (*Defendant*).*
[30th April, 1888.]

*Civil Procedure Code (Act XIV of* 1882), *s.* 257 *A—Agreement extending time of payment under decree without sanction of Court—Application for such sanction after the decree was barred.*

The decree in a redemption suit directed that the lands mortgaged should be allowed to be redeemed on payment of Rs. 30-7-0 by the plaintiff to the defendant. The decree was subsequently modified by substituting Rs. 91-2-6 for Rs. 30-7-0. On the 3rd October, 1885, the parties entered into an agreement whereby (*inter alia*) the time to pay the decreed debt was extended to five years from that date, but no sanction of the Court was obtained. On the 18th February, 1888, the parties applied to the Court to sanction the agreement of 1885. On reference to the High Court.

[55] *Held*, that the agreement in question required the Court's sanction under s. 257 A of the Civil Procedure Code (Act XIV of 1882), for want of which it was void so far as it related to the judgment-debt, and that the sanction could not be given at the date it was applied for.

[R., 7 Bom.L.R. 995 (997).]

THIS was a reference by Rav Saheb Bhau Yeshvant Gupte, Subordinate Judge of Vita, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

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* Civil Reference, No. 8 of 1888.