

law that any "disagreement" between two widows of a family can justify the eviction of one of them from the family residence. We are not shown any authority to support such a proposition. Besides, it would always enable one of them, by picking up a quarrel, to eject the other; and occasions for doing so are by no means rare even in a well-governed family. It [106] may also be noticed that the defendant (appellant) is the senior widow; and, according to Hindu notions, the respondent, who is junior in rank, is bound, morally at all events, to respect and obey her.

We must, therefore, reverse the decrees of both the lower Courts, and reject the claim, with costs throughout.

Decrees reversed.

13 B. 106.

APPELLATE CIVIL.

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

MAHANT ISHWARGAR (*Original Defendant*), *Appellant v.*
CHUDASAMAMANABHAI AND OTHERS (*Original Plaintiffs*),
*Respondents.** [20th June, 1888.]

Mortgage—Redemption—Decree for redemption within specified time—Appeal against decree—Power of Court in execution to extend time for redemption allowed by decree—Fact of appeal pending, no special ground for enlarging time.

The plaintiffs sued for the redemption of certain mortgaged property. On the 1st March, 1886, a decree was passed declaring the plaintiffs entitled to redeem on payment by them to the defendants of Rs. 649-11-0 within three months from the date of the decree. Against this decree the defendants (the mortgagees) appealed, on the ground that a much larger sum than Rs. 649-11-0 was due to them on the mortgage. The plaintiffs also filed objections to this decree under s. 561 of the Civil Procedure Code (XIV of 1892), on the ground that the mortgage-debt had been long ago paid off, and that now a large sum was due to them from the mortgagees who had been in receipt of the profits of the property. Under these circumstances the plaintiffs did not pay the Rs. 649-11-0 within three months as ordered by the decree. On the 12th October, 1886, they presented an application for execution, and paid into Court the Rs. 649-11-0. The lower Court granted their application, and ordered possession of the property to be given to them. The defendant appealed to the High Court.

Held, reversing the order of the Court below, that the Court in executing the decree had no power to alter the language of the decree, which it would virtually do if it enlarged the time mentioned in it by accepting the Rs. 649-11-0 paid into court by the plaintiffs on the 12th October, 1886.

Held, also, that even if the Court had power to enlarge time in the course of execution, the mere fact that the plaintiff had lodged an appeal, would afford no special ground for enlarging the time.

[F., 15 B. 370 (375); 17 B. 547 (554); 19 M. 40 (45); L.B.R. (1893—1900) 174 (176); R., 16 C.L.J. 520=16 C.W.N. 1090=15 Ind. Cas. 689; 17 C.L.J. 120=17 C.W.N. 457=18 Ind. Cas. 747; 15 B. 644 (646); 16 B. 249; 22 B. 221 (224); 22 B. 500; L.B.R. (1893—1900) 420; D., 16 B. 263 (265).]

[107] THIS was an appeal from a decision of Khan Bahadur B. E. Modi, First Class Subordinate Judge of Ahmedabad.

The plaintiffs (respondents) in this suit obtained a decree on the 1st March, 1886, for the redemption of certain mortgaged property on payment by them of Rs. 649-11-0 to the defendants within three months from the date of the decree.

* Appeal, No. 20 of 1887.

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The defendants appealed on the ground that a much larger sum than Rs. 649-11-0 was due to them on the mortgage. The plaintiffs also filed objections to the decree under s. 561 of the Civil Procedure Code (XIV of 1882), on the ground that the mortgage-debt had been long since paid off, and that a large sum was now due by the mortgagees, who had been in possession of the property. In view of the pending appeal the plaintiffs did not pay the Rs. 649-11-0 within the three months as ordered by the decree. On the 12th October, 1886, they presented an application for execution of the decree, and paid into Court the Rs. 649-11-0. They prayed for symbolical possession of the mortgaged property under s. 264 of the Civil Procedure Code (XIV of 1882). The defendants contended that the plaintiffs were foreclosed, inasmuch as they had failed to pay within the time ordered by the decree, and that the Court had no power to extend the time for payment allowed by the decree, and to grant execution.

Branson, Telang and Rav Saheb Vasudev Jagannath with him, for the appellant:—The lower Court had no power in October to accept the Rs. 649-11-0 from the plaintiffs and order possession to be given to them. The time prescribed by the decree for payment of the money by the plaintiffs had expired, and in execution the Court had no power to extend the time. A Court executing a decree must execute it as it stands. To extend the prescribed time, is equivalent to altering the language of the decree, which cannot be done—*Sakwar v. Mukund Babajishet* (1); *Shaik Budan v. Ramchandra* (2). The mere fact that the Court executing the decree is the Court that passed it, makes no difference. The effect of the plaintiff's failing to pay within the three months, was to make the decree operate as a foreclosure decree—*Gansavant v. Narayan* [108] *Dhond Savant* (3). Time may be extended in foreclosure suits, but not in redemption suits, except under very special circumstances which do not exist here—*Novosielski v. Wakefield* (4); *Fisher on Mortgages*, 953. There was no reason for the plaintiffs' delay in payment.

Latham (Advocate General), *Kirkpatrick, Jardine, and Ganpat Sadashiv Rav* with him, for the respondents:—The plaintiffs have lodged an appeal against the decree, and pending that appeal there cannot be a foreclosure. Time would be calculated from the decree made in appeal—*Daulat v. Bhukandas* (5). But in no case could this decree operate as a foreclosure decree, as it contains no foreclosure clause. To give it the effect of a foreclosure decree would be to alter its language by adding a foreclosure clause. In the cases cited by the other side the decrees had a foreclosure clause. See, as to the necessity for such a clause, *Datatraya v. Anaji* (6). Having regard to the facts (1) that in the absence of a foreclosure clause there could be no foreclosure under the decree, and (2) that the plaintiffs had lodged an appeal, and that in any event there could be no foreclosure until the appeal was decided, we contend that the order appealed from, was right. Counsel referred to *Finch v. Shaw* (7); *Renvoize v. Cooper* (8); Transfer of Property Act, IV of 1882, ss. 92-93.

JUDGMENT.

SARGENT, C. J.—The Subordinate Judge has granted the plaintiffs' application made in execution of the decree obtained by them in their

(1) Printed Judgments for 1887, p. 324.

(2) 11 B. 537.

(3) 7 B. 467.

(4) 17 Ves. 417.

(5) 11 B. 172.

(6) Printed Judgments for 1886, p. 237.

(7) 20. Bea. 555.

(8) 6 M. 371.

redemption suit No. 1107 of 1877, on the ground that it is the practice of the English Court of Chancery to enlarge the time for payment of the mortgage-debt; that such a practice is recognised by the Transfer of Property Act; and that there were sufficient grounds alleged for exercising the power of enlargement. As to the practice of the Court of Chancery, it would appear from the judgment in *Novosielski v. Wakefield* (1) that, under special circumstances, the Court will enlarge the time given in a redemption decree, but the question here is whether the Court executing the decree has the power to do so. [109] The proviso to s. 93 of the above Act empowers the Court to postpone the day fixed in a redemption suit under s. 92, as to which it may be a question whether this proviso would apply to a case like the present where the application is for execution of the decree, and the day has already expired. But it is sufficient to say in the present case that the Act has not been extended to this Presidency, and that the Court executing the decree has no power to alter the language of the decree, which it would virtually do if it enlarged the time mentioned in it by accepting the Rs. 649-11-0 paid into Court on the 12th October, 1886. See the directions of this Court in *Sakwar v. Mukund Babajishet* (2). We may also add that, in our opinion, even if the Court had the power to enlarge in the course of execution, the mere fact that the plaintiffs had lodged an appeal would afford no special ground for enlarging the time. We must, therefore, discharge the order of the Court below, and reject the *darkhast*, with costs throughout on plaintiffs.

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Order discharged.

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CRIMINAL REFERENCE.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS v. RACHAPPA AND QUEEN-EMPRESS v. IRAPPA.*
[5th July, 1888.]

Sanction to prosecute—Revocation of—Distinction between a sanction granted to a private person and a complaint by a Court—Criminal Procedure Code (Act X of 1882), ss. 195 and 476.

Section 195 of the Criminal Procedure Code (Act X of 1882) distinguishes between the sanction granted by a Court to a prosecution by a private individual and a complaint made by the Court itself. A superior Court to which such Court is subordinate may revoke the sanction granted in the former case to the private prosecution, but it has no power in the latter case to set aside a complaint duly made by a subordinate Court.

Ishri Prasad v. Sham Lal (3), *Queen v. Baijoo Lall* (4) and *Gyan Chunder Roy v. Protab Chunder Doss* (5) referred to.

[Diss., 16 A. 80=14 A.W.N. 9; 26 B. 785; 20 C. 349 (350); 21 M. 324 (F.B.)=2 Weir 124; 18 P.R. 1902 (Cr.)=78 P.L.R. 1902; F., 13 M. 144; R., 26 A. 249 (259)=24 A.W.N. 15; 32 B. 184=10 Bom. L.R. 28 (36)=7 Cr. L.J. 35=3 M.L.T. 116; 17 C.L.J. 245 (251)=17 C.W.N. 647=14 Cr. L.J. 197=19 Ind. Cas. 197; 9 C.P.L.R. 27 (28) (Cr); 23 P.R. 1901 (Cr); 30 P.R. 1905. (Cr.)=105 P.L.R. 1905; Rat. Un. Cr. Cas. 587; Rat Un. Cr. Cas. 701 (703); Rat. Un. Cr. Cas. 895 (899).]

* Criminal Reference, No. 129 of 1887.

(1) 17 Vesey. 417.

(2) Printed Judgments for 1887, p. 324.

(3) 7 A. 871.

(4) 1 C. 450.

(5) 7 C. 208.