

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

AMRITA BIN BAPUJI AND ANOTHER (*Original Plaintiffs*),
Appellants v. NARU BIN GOPALJI SHAMJI AND ANOTHER
(Original Defendants), Respondents. * [13th August, 1888.]

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 13 B. 489.

Valuation of a suit—Redemption suit—Dekkhan Agriculturists' Relief Act (XVII of 1879), Chap. II, s. 3—Appeal—Jurisdiction.

In a redemption suit the valuation of the subject-matter does not depend on the value of the mortgaged property. Where the mortgage itself is denied, and the mortgagee does not say what he claims in respect of the mortgage-debt, the amount found to be remaining due on the mortgage, if any amount was due at the date of the suit, would represent the true valuation of the subject-matter of the suit.

Rupchand Khemchand v. Balvant Narayan (1) followed.

The plaintiffs, who were agriculturists, sued to redeem certain lands, alleging that they had been mortgaged to the defendants' father for Rs. 50, and that the debt had been satisfied out of the rents and profits of the mortgaged property. The defendants denied the alleged mortgage. The Subordinate Judge found that [490] the mortgage was proved, and that the mortgage-debt had been more than paid off out of the profits of the property in dispute. He, therefore, passed a decree awarding possession to the plaintiffs. Against this decree the defendants appealed. The District Court found that the mortgage was not established, and reversed the decree of the Subordinate Judge.

Held, on second appeal, that no appeal lay to the District Court from the decision of the Subordinate Judge. As the Subordinate Judge found that no sum remained due on the mortgage, and as the original advance was alleged to have been Rs. 50, the suit was governed by the provisions of chap. II of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

[R., 16 B. 183 (185); 2 Ind. Cas. 677 (680); 8 Ind. Cas. 973=5 L.B.R. 208 (212).]

SECOND appeal from the decision of C. H. Jopp, Assistant Judge of Satara, in appeal No. 322 of 1884 of the District File.

The plaintiffs, who were agriculturists, sued to redeem certain property, alleging that it had been mortgaged to the defendants' father Gopalji, deceased, for Rs. 50, and that the debt had been satisfied out of the rents and profits of the mortgaged property, and praying that an account should be taken.

The defendants denied the alleged mortgage, and contended that they had been in possession, as owners, for more than fifty years.

The Subordinate Judge found that the mortgage was proved, and that the mortgage-debt had been more than paid off out of the profits of the property. He also held that as the value of the property exceeded Rs. 100, chap. II of the Dekkhan Agriculturists' Relief Act (XVII of 1879) did not apply to the case. He, therefore, passed a decree awarding possession of the property in suit to the plaintiffs.

On appeal this decree was reversed, the Assistant Judge being of opinion that the mortgage set up by the plaintiffs was not established.

Against this decision the plaintiffs appealed to the High Court.

Ghanasham N. Nadkarani, for appellants.—The District Court had no jurisdiction to hear the appeal. The mortgage debt is less than Rs. 100.

* Second Appeal No. 505 of 1888.

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The Court of first instance found that there was nothing remaining due on the mortgage at the date of the suit. The case, therefore, falls under s. 3 of Act XVII of 1879. Under s. 10 of the Act the decision of the [491] Subordinate Judge is final. Refers to *Rupchand Khemchand v. Balwant Narayan* (1).

Vishnu K. Bhatvadekar, for respondents.—The question of jurisdiction was not raised in the Court below. It is now too late to raise it in second appeal. Refers to *Pitamber Vajirshet v. Dhondu Navlapa* (2), *Pandoji Tulsaji v. The Collector of Poona* (3). I contend that the District Judge had jurisdiction to hear the appeal. The defendants claim more than Rs. 500 on account of improvements.

JUDGMENT.

BIRDWOOD, J.—It has been objected, in second appeal, that no appeal lay to the District Court from the decision of the Subordinate Judge in this case. This objection was not taken in the lower appellate Court; but it can, nevertheless, be taken here—*Shri Sidheshwar Pandit v. Shri Harihar Pandit* (4). We think that the objection is valid. The plaintiffs are agriculturists, and sued to redeem a mortgage for an advance of Rs. 50, which, they said, had been satisfied from the profits of the property in the defendants' possession. The defendants denied the mortgage, and claimed the property as their own. But such denial would not alter the character or nature of the subject-matter of the suit. It continued, after the denial, in its original shape so far as the plaintiffs were concerned, "nor is the complexion of it entirely changed because the defendants put forward certain grounds of defence which, if well founded," must defeat the plaintiff's right to redeem—*Gobind Singh v. Kallu*. (5) The Subordinate Judge found the alleged mortgage proved, and also that the debt had been more than paid off out of the profits of the property. He held, however, that the case has not one to which chap. II of the Dekkhan Agriculturists' Relief Act was applicable, as the value of the property exceeded Rs. 100; and this opinion seems to have been practically adopted by the District Judge when he admitted the appeal. In a redemption suit, however, the valuation of the subject-matter does not depend on the value of the mortgaged property. In the present case, where the mortgage itself is denied, and the mortgagee does not say [492] what he claims in respect of the mortgage-debt, the amount found to be remaining due on the mortgage, if any amount was due at the time when the suit was filed, would represent the true valuation of the subject-matter of the suit—*Rupchand Khemchand v. Balwant Narayan* (1). As the Subordinate Judge found that no sum remained due, and as the original advance is only alleged to have been Rs. 50, the case appears to be one falling under s. 3 of the Act. There was no appeal, therefore, from the decision of the Court of first instance; and we, therefore, reverse the decision of the lower appellate Court as having been made without jurisdiction. Each party to bear his own costs in the lower appellate Court and here.

PARSONS, J.—If the case had been one of first impression I should have been inclined to hold that the words "mortgaged property" in paragraphs (y) and (z) of s. 3 of the Dekkhan Agriculturists' Relief Act

(1) 11 B. 591.
(2) 12 B. 155.

(2) 12 B. 486.
(5) 2 A. 778 (780).

(3) Printed Judgments for 1876, p. 103.

must be construed to mean "admittedly mortgaged property," and that the provisions of s. 10 could not apply to cases where the mortgage was denied and title had to be proved. The point, however, is concluded by authority—*Rupchand Khemchand v. Balvant Narayan*(1) and *Gobind Singh v. Kallu*(2)—and I follow that authority. At the same time I must express my opinion that an amendment of the Act is necessary, for it is not right that under an Act passed only to relieve the agricultural classes from indebtedness, Subordinate Judges of the Second Class should be authorized to deal with questions which affect titles to immoveable property, and to dispose of them with final effect, on the mere allegation of the plaintiff that such property was mortgaged, and that the amount due on the mortgage at the date of suit was less than Rs. 100.

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Decree reversed.

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[493] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

GURPADAPA BIN IRAPA (*Original Plaintiff*), *Appellant v. NARO VITHAL KULKARNI (Original Defendant), Respondent.** [28th August, 1888.]

Stamp Act (I of 1879), s. 34, cl. (3)—Instrument admitted as duly stamped—Appellate Court's power to question the admission—Reg. XVIII of 1827, s. 10—Practice.

Where a Court of first instance has admitted a document in evidence as duly stamped, s. 34, cl. 3 of the Stamp Act (I of 1879) precludes the appellate Court from questioning the admission of such document. If the appellate Court considers the document to be insufficiently stamped, it can only proceed under s. 50 of the Act.

Section 34 of Act I of 1879 applies to all instruments whenever executed, and must, therefore, be held to over-ride the special provision of s. 10 of Bombay Reg. XVIII of 1827, according to which no instrument requiring a stamp thereunder was valid unless duly stamped.

[F., 18 B. 737; R., 17 B. 235 (240).]

SECOND appeal from the decision of E. M. H. Fulton, acting District Judge of Belgaum, in appeal No. 164 of 1885 of the District File.

The plaintiff sued to establish his title to a yard, to recover Rs. 8, being the cost of building a wall, and to restrain the defendant from obstructing the building of the wall. He alleged that the yard in dispute had been mortgaged to him with possession by Vishnu, Naro and Venkaji, sons of Gopal, under a deed dated 5th June 1879; that the defendant illegally demolished a wall to the west of the yard, and thereby obstructed the plaintiff's enjoyment of the yard.

The defendant denied the mortgagor's title to the yard in question, and set up his own title to it by right of purchase from one Govind Sakbaram, a cousin of Gopal, to whom he alleged it had been allotted on a partition.

The plaintiff relied, in support of his mortgagor's title, on a certified copy of a partition deed executed between Gopal and Govind in A.D. 1852. The original appeared to have been written on a four-anna stamp

* Second Appeal No. 465 of 1886.

(1) 11 B. 591.

(2) 2 A. 778.