

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Candy.

KASHIRAM MULCHAND (*Original Defendant*), Appellant v.  
HIRANAND SURATRAM (*Original Plaintiff*), Respondent.\*

[23rd June, 1890.]

*Dekkhān Agriculturists' Relief Act (XVII of 1879), s. 3, cls. (x) and (z)—Suit to redeem a pledge—Appeal.*

A suit for the redemption of a chattel is one falling under cl. (x) of s. 3 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). In districts in which the Act is in force this clause is applicable to cases in which neither party is an agriculturist.

The word "mortgaged" in cl. (z) of s. 3 of the Act applies only to immoveable property.

A suit was brought to redeem an ornament pledged for a sum below Rs. 500. The suit was filed in the Court of the First Class Subordinate Judge at Satara, where Act XVII of 1879 is in force. The Subordinate Judge passed a decree for redemption of the pledge.

*Held*, that though neither of the parties was an agriculturist, the case fell under chap. II of the Act, and that no appeal lay against the decree of the Subordinate Judge.

*Held*, further, that the Special Judge had revisional jurisdiction in the matter.

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

One Hirachand Suratram filed a suit against the applicant in the Court of the First Class Subordinate Judge at Satara to redeem a gold ornament, alleging that it had been pledged with the applicant for Rs. 150.

[31] Neither of the parties was an agriculturist. The Subordinate Judge, however, tried the suit as one falling under cl. (x) of s. 3 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), and passed a decree in plaintiff's favour, directing him to recover the ornament on payment of Rs. 75-6-11 to the defendant within one month.

Thereupon the defendant applied to the Special Judge, under s. 54 of Act XVII of 1879, for a revision of the decision of the Subordinate Judge.

The Special Judge rejected his application, on the ground that as the plaintiff was not an agriculturist, he had no jurisdiction in the matter.

The defendant then appealed to the District Judge against the decree of the Subordinate Judge.

The District Judge held that the provisions of chap. II of the Dekkhan Agriculturists' Relief Act, except where limited expressly, applied to all persons, whether agriculturists or not, and that he had, therefore, no authority to hear the appeal.

Against this decision the defendant applied to the High Court under its revisional jurisdiction.

A rule *nisi* was issued to the plaintiff to show cause why the District Judge's order should not be set aside.

\* Application, No. 237 of 1889.

1890

JUNE 23.

*Balaji Abaji Bhagvat* showed cause.*Mahadev Bhaskar Chaubal*, contra.

APPEL-

LATE

CIVIL.

15 B. 30.

## JUDGMENT.

BIRDWOOD, J.—The plaintiff sues to redeem an ornament pledged with the defendant. We think that the District Judge has rightly held that the suit, which arises in the Satara District where Act XVII of 1879 is in force, is one falling under cl. (x) of s. 3 of the Act and not under cl. (z). The word "mortgaged" in cl. (z) must be held to apply only to immoveable property; for the clause is applicable to redemption suits only when the plaintiff or any one of several plaintiffs is an agriculturist. There would apparently be no reason for such a provision in reference to a suit brought to redeem a chattel. Clause (x) of the same section is, however, clearly applicable to a suit for the redemption of a pledge. It applies to suits for [32] the recovery of money due on contracts other than those specified in cl. (w) and to suits for moveable property. A suit for the redemption of a pledge is described in art. 145 of the Limitation Act as a suit against a pawnee to recover moveable property pawned. The present suit is of that character. It falls, therefore, under cl. (x), which is applicable to cases in districts where the Act is in force in which neither party is an agriculturist (see *Tulsidas Dhunji v. Virbasapa* (1)); so that, though neither of the parties is an agriculturist in the present case, it falls under chap. II of the Act, and the value of the claim being below Rs. 500, and the suit having been tried by a First Class Subordinate Judge, no appeal lies from his decision. The Special Judge ought, therefore, to have heard the application made to him for revision of the First Class Subordinate Judge's decree instead of referring him to the District Court.

We must uphold the District Court's order refusing to hear the appeal; but in discharging the rule *nisi* obtained by the applicant, we direct the Special Judge, under the third paragraph of s. 54 of the Act, to hear the application made to him on the 12th November, 1888. Costs of this application to be dealt with by the Special Judge.

*Rule nisi discharged.*

15 B. 32.

## APPELLATE CIVIL.

*Before Mr. Justice Birdwood and Mr. Justice Candy.*

KRISHNAJI MAHADEV MAHAJAN AND ANOTHER (*Original Defendants*), *Appellants v. MORO MAHADEV MAHAJAN AND ANOTHER (Original Plaintiffs), Respondents.*\* [25th June, 1890.]

*Hindu law—Gains of science—Fruits of elementary education impartible—Earnings of different co-sharers thrown into the joint stock—Estoppel.*

Three brothers—K., M. and N.—were members of a joint Hindu family living at Nagothna. M. and N. went to Baroda and obtained employment there as *karkuns*. They had not received anything more than a rudimentary education before they left their family house at Nagothna. K. remained at home to look after the affairs of the family. M. and N. used to remit moneys from time to time

\* Second Appeal, No. 162 of 1889.

(1) 4 B. 624.