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APPEL-
LATE
CIVIL.
—
15 B. 84.

found, on taking accounts, that a sum of Rs. 619-11-11 was due to the mortgagee, and decreed redemption on payment of this amount within six months.

On appeal, the District Judge held, on the authority of *Narayan v. Gangaram* (1), that the rule of *damdupat* did not apply to mortgages. He amended the decree of the Subordinate Judge by directing that the plaintiff should pay Rs. 798-0-1 within six months and redeem the property, or be for ever foreclosed.

[85] Against this decision the plaintiff appealed to the High Court.
Mahadev Chimnaji Apte, for appellant.
Ramchandra Ganesh Mundle, for respondent.

JUDGMENT.

BAYLEY, J.—The District Judge is wrong in saying that the rule of *damdupat* does not apply to mortgages. The decision he quotes, *Narayan v. Gangaram* (1), is, no doubt, to that effect; but the proposition has there been laid down too broadly, as is shown in later cases. See *Nathubhai Panachand v. Mulchand Hirachand* (2); *Narayan v. Satvaji* (3); *Ganpat Pandurang v. Adarji Dadabhai* (4). The rule does apply to mortgages where no account of the rents and profits has to be taken, as is the case here (5).

We, therefore, amend the appellate Court's decree by substituting Rs. 680-13 5 for Rs. 798-0-1, and by directing that, on payment within six months of this date of that sum plus or minus, as the case may be, any sum that may be found due to either party in execution on taking accounts under the first mortgage from the 17th April, 1889 to date of payment, and of the costs of the defendant that he has been ordered to pay, plaintiff redeem, and that, in default of such payment, he be for ever foreclosed.

Each party to bear his own costs in this and the lower appellate Court.

Decree amended.

15 B. 86.

[86] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

BAIKALI (*Plaintiff*) *v.* ALARAKH PIRBHAI, (*Defendant*).^{*}
[14th August, 1890.]

Civil Procedure Code (Act XIV of 1882), s. 159—Summonses to witnesses—Limitation—Practice—Construction.

Under s. 159 of the Civil Procedure Code (Act XIV of 1882), a party to a suit is entitled, as of right, to obtain summonses for his witnesses any time before the day fixed for the disposal of the suit.

[F., 13 C.P.L.R. 152; Appl., 16 A. 218 (219).]

^{*} Civil Reference, No. 2 of 1890.

(1) 5 B. H. C. R. A. C. J. 157.

(2) 5 B. H. C. R. A. C. J. 196.

(3) 9 B. H. C. R. A. C. J. 83.

(4) 3 B. 312 (333).

(5) W. & B. 786, 3rd ed.

THIS was a reference by Khan Saheb J. E. Modi, Subordinate Judge of Viramgam, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

The question referred by the Subordinate Judge for the High Court's decision was:—

Has a party any right, after issues have been fixed or hearing has commenced, to give a list of additional witnesses to be summoned by the Court?

The Subordinate Judge was of opinion that he has no such right under s. 159 of the Civil Procedure Code.

There was no appearance for either of the parties.

JUDGMENT.

SARGENT, C. J.—By the language of s. 159 of the Civil Procedure Code a party to a suit is entitled, as of right, to summonses to witnesses any time before "the day fixed for the disposal" of the suit. West, J., in *Kaji Ahmed v. Kaji Mahamad* (1) says the Court, may, under proper circumstances, "refuse to adjourn the hearing for their attendance, even though they have been summoned," and so it may equally inform the party asking for summonses during the hearing, as was the case here, that it does not intend to adjourn the hearing for their attendance, but it cannot refuse to grant the summonses if insisted on. It might happen that the hearing was not concluded as expected, and that it would be right, after all, to hear the witnesses so summoned.

15 B. 87.

[87] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

MARUTI SAKHARAM (*Original Plaintiff*), Appellant v. BABAJI,
DECEASED, BY BIS SON BALA (*Original Defendant*), Respondent.*
[14th August, 1890.]

Hindu law—Money decree against father—Execution sale—Auction-purchaser at such sale—Construction—Practice.

In the absence of special circumstances showing an intention to put up the entire interest of the family in the property sold in execution of a money decree against the father, only the interest of the father passes to the auction-purchaser, regard being had to *Baboo Hurdey Narain Sahu v. Pandit Baboo Rooder Perlash Misser* (2) and *Simbhunath v. Golab Seng* (3).

[*Diss.*, 14 A. 190 (191); *F.*, 3 Bom. L. R. 97 (99); *R.*, 21 B. 616 (618); 24 B. 343 (344); 3 Bom. L.R. 322 (355).]

THIS was a second appeal from a decision of W. H. Crowe, District Judge of Satara.

The plaintiff and his father Sakharam were members of an undivided Hindu family. One of Sakharam's creditors obtained a money decree against him, and sold certain land in execution. The defendant purchased it at the execution sale, and obtained possession.

* Second Appeal, No. 293 of 1889.

(1) 9 B. 308 (310).

(2) 11 I.A. 26=10 C. 626. (3) 14 I.A. 77=14 C. 572.