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the mortgagor should pay the amount; the amount was to be recovered from the mortgaged property. The bond in the present case contains a covenant that the defendant would pay the money after the expiration of five years—*Ramayya* v. *Guruva* (1). There being an undertaking in the mortgage-bond to pay, that gives the mortgagee a right to sue for sale. When there is a covenant in the usufructuary mortgage, to pay, as in the present case, it ceases to be a pure usufructuary mortgage, and carries with it the right of sale if the money be not paid within the stipulated time—Macpherson on Mortgage, page 11. Owing to the plaintiff's failure to take possession of the land, the defendant has not only appropriated the produce thereof, but has, in addition, enjoyed the benefit of the loan of Rs. 500. We are, therefore, entitled to recover interest.

JUDGMENT.

[428] CANDY, J.—Admittedly the decree against the defendant personally was bad and must be reversed.

It is further contended that under the bond the mortgagee had no right to ask that in default the land should be sold. But this is not so. It was not merely a usufructuary mortgage, which would confer no right to have the property sold. There was a distinct covenant to pay the principal, and the land was security for the same; so we cannot infer that the intention of the parties was that the property should not be sold. It was a "simple mortgage usufructuary," carrying the right to have the property sold in default of payment of the principal sum of Rs. 500.

Plaintiff's pleader also asks that the property may be sold in default of payment of interest. That claim is bad. For the plaintiff was entitled to possession in lieu of interest, and, if he never took the trouble to obtain possession, he lost his right to interest. The land was security for the principal. The decree must be amended, and judgment passed for Rs. 500, to be paid within three months; in default the land to be sold. Costs in proportion throughout.

Decree amended.

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17 B. 428.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Telang.

BHAGVAN (*Original Plaintiff*), *Appellant* v. KESUR KUVERJI (*Original Defendant*), *Respondent.** [1st August, 1892.]

Civil Procedure Code (Act XIV of 1882), s. 574—Judgment of Appellate Court—Reasons for the decision to be stated.

Section 574 of the Code of Civil Procedure (Act XIV of 1882) is imperative, and under it the appellate Court is bound to state the reasons for its decision.

A Court of appeal framed certain issues under s. 566 of the Code of Civil Procedure (Act XIV of 1882), and remanded them for findings by the original Court. On the return of these findings, as neither party filed any objections, the **[429]** appellate Court accepted these findings, without giving any reasons for so doing, or even stating in its judgment whether it concurred in them or not, and confirmed the decree of the original Court.

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* Second Appeal No. 298 of 1891.

(1) 14 M. 232.

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Held, that the judgment of the appellate Court was not a judgment according to law.

[F., 7 M.L.J. 236 (237); R., 19 B. 551; 23 B. 334 (339); 20 M. 496; 31 M. 469 (471) (F.B.)=18 M.L.J. 34=3 M.L.T. 71; 17 M.L.J. 62-N; 8 O.C. 290 (292).]

SECOND appeal from the decision of T. Hamilton, Acting District Judge of Surat, in appeal No. 22 of 1889 of the District File.

The plaintiffs sued to recover one-fifth share of a certain field, alleging that they had purchased this share of the field from one Kalyan Jogi, who had inherited it from Bhula Lalbhai.

The Subordinate Judge rejected the plaintiff's claim.

On appeal the District Judge raised the following issues:—

(1) Had Bhula Lalbhai one-fifth share in the field in question?

(2) Did Kalyan Jogi obtain this one-fifth share from Bhula by inheritance or gift?

The District Judge, being of opinion that the plaintiffs should have been allowed to examine certain witnesses they had already named in their *darkhast*, remanded the case, in order that, after examining those witnesses, the lower Court might record findings on the above issues.

The Subordinate Judge recorded his findings on both the issues in the negative.

On the return of these findings the hearing of the appeal was resumed.

No objections to the findings having been filed on either side, the District Judge confirmed the lower Court's decree, without, however, giving any reason for his decision.

The plaintiffs thereupon preferred a second appeal to the High Court.

Govardhanram M. Tripathi, for appellants:—The District Judge's judgment is not a judgment according to law. He does not give any reasons for the decision. Under s. 574 of the Code of Civil Procedure he is bound to state the reasons for his [430] decision—*Umed Ali* v. *Salim Bibi* (1); *Mumtaz Begam* v. *Fateh Husain* (2).

Motilal M. Munshi, for respondent:—Neither party took any objections to the findings of the Court of first instance. The lower appellate Court was, therefore, right in accepting those findings and confirming the decree.

JUDGMENT.

JARDINE, J.—The District Judge under s. 566 of the Code of Civil Procedure framed issues of fact, and remanded them for findings by the original Court. On return of the findings, the District Judge overruled a contention of the present appellants that the Subordinate Judge had wrongly refused to take the evidence of certain witnesses. It does not appear, however, that any memorandum of objection was filed under s. 567, or that any objection was taken orally at the hearing to the findings as not justified by the evidence on record. The District Judge silently accepted these findings, without giving any reasons for so doing, or even stating in his judgment whether he concurred in them or not.

The only point argued before us in support of the appeal is that s. 574 of the Code of Civil Procedure is imperative and required the District Judge to give his own decision, and the reasons for it, upon the issues remanded, to the original Court under s. 566. In support of this contention, *Umed Ali* v. *Salima Bibi* (1) and *Mumtaz Begam* v. *Fateh Husain* (2) are cited. The point does not appear to have been decided by this

(1) 6 A. 383. (2) 6 A. 391.

High Court. But we are of opinion that these cases interpret the Code correctly. Section 567 requires the lower Court of appeal to proceed to determine the appeal. Section 571 requires it to pronounce judgment, and s. 574 *is imperative as to what the judgment is to contain.*

We, therefore, set aside the decree of the District Court and remand the appeal to that Court, in order that it may record judgment as required by the law, and pass a *decree thereupon.* Under the circumstances, we direct that the parties pay their own costs in this Court.

Decree reversed and case remanded.

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17 B. 431 (P.C.) = 20 I.A. 50 = 6 Sar.P.C.J. 52 = 17 Ind. Jur. 100.

[431] PRIVY COUNCIL.

PRESENT:

Lords Hobhouse, Macnaghten, Hannen and Shand and Sir Richard Couch.

[On appeal from a judgment of the Governor in Council of Bombay as an appellate Court under Regulation XXIX of 1827.]

SHEKH SULTAN SANI (*Appellant*) *v.* SHEKH AJMODIN (*Respondent*); AND BY REVIVOR SHEKH SULTAN SANI (*Appellant*), AND BEGUMBI KOM AJMODIN AND OTHERS (*Respondents*). [18th, 19th, 24th and 25th June, and 1st July, 1891 and 19th November, 1892.]

Resumption by the Government of estates held on political tenure—Mixed estate of saranjam and inam so held—Non-jurisdiction of Civil Courts.

The engagements entered into by treaty between the British Government and the Raja of Satara in 1819, and the terms fixed separately with the several Satara jaghirdars in 1820, did not impart any greater fixity of tenure than had previously belonged to the latter under Maratha rule; and their jaghirs remained liable to resumption at the will of the Government.

The question to whom a saranjam, or jaghir, shall be granted, upon the death of its holder, is one which belongs exclusively to the Government to be determined upon political consideration; and it is not within the competency of any legal tribunal to review the decision.

Inam villages and lands, with the mokasa, included originally in one saranjam granted under the Maratha rule for the support of troops, remained after 1820, when the rule of the Peshwa had ceased, a personal and military jaghir, forming a mixed estate of saranjam and inam. The tenure remained, under British rule, political; and no distinction could be drawn in this respect between the inam lands and the saranjam. The whole estate passed to the person whom the Government at its discretion, for political reasons, recognized as the grantee, without its being competent to any Court of law to question the decision of the executive authority in the matter.

[R., 34 B. 329 (339) = 12 Bom. L.R. 208 = 5 Ind. Cas. 965; 5 Bom.L.R. 983 (986).]

APPEAL from a judgment (28th April, 1887) of the Governor of Bombay in Council, as an appellate Court under Regulation XXIX of 1827, varying a judgment (8th June, 1886) of the Court of the Agent for Sardars in the Deccan and Khandesh.

The plaintiff (now appellant) alleges himself to be the son of Shekh Khan Mahomed Waikar, deceased on 31st December, 1872, who was a jaghirdar, and sardar of the second class on the list of the Agent for Sardars. The defendant Shekh Ajmodin valad Abdul Rajak was the son of the daughter of the **[432]** brother, named Abdul Kadar, of the abovenamed