

APPELLATE CIVIL.

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

1894.

April 10.

BHA'GIRATHIBA'I, APPLICANT, v. HARI RA'VJI CHIPLUNKAR,

OPPONENT.*

Dekkhan Agriculturists' Relief Act (Act XVII of 1879), Sec. 15 B†—Decree for redemption—Order for the payment of money within a certain period—Application for payment by instalments—Order to be made in the course of proceedings under the decree, that is, by the Court which carries out the decree.

In a redemption suit under the Dekkhan Agriculturists' Relief Act (Act XVII of 1879), the Court having passed a decree for the payment of the mortgage amount within a certain period, and the decree being confirmed in second appeal, the mortgagor after the expiration of the time for redemption specified in the decree applied to the High Court for an order for the payment of the amount by instalments under section 15 B of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

Held, that such an order could only be made in the course of the proceedings under the decree, that is, by the Court which carries out the decree.

Gulábpuri v. Pándurangt(1) referred to.

THIS was an application made to the High Court under the following circumstances:—

The applicant as an agriculturist sued for the redemption of certain property, and obtained a decree. The decree directed her to pay the sum of Rs. 2,800 to the opponent within six months from the date of the decree, or, in default, to be for ever foreclosed. The decree was confirmed in second appeal by the High Court.

* Civil Application, No. 12 of 1894.

† Section 15 B of the Dekkhan Agriculturists' Relief Act (Act XVII of 1879):—

15 B. (1) The Court may in its discretion, in passing a decree for redemption, foreclosure or sale in any suit of the descriptions mentioned in section three, clause (y) or clause (z), or in the course of any proceedings under a decree for redemption, foreclosure or sale passed in any such suit whether before or after this Act comes into force, direct that any amount payable by the mortgagor under that decree shall be payable in such instalments, on such dates and on such terms as to the payment of interest, and, where the mortgagee is in possession, as to the appropriation of the profits and accounting therefor, as it thinks fit.

(2) If a sum payable under any such direction is not paid when due, the Court shall, except for reasons to be recorded by it in writing, instead of making an order for the sale of the entire property mortgaged or for foreclosure, order the sale of such portion only of the property as it may think necessary for the realization of that sum.

(1) P. J., 1886, p. 142.

The applicant failed to procure funds to satisfy the decree, and the period of six months expired. She now applied to the High Court to extend the period for six months more, or, in the alternative, to make the decree payable by annual instalments of Rs. 400 each under the provisions of section 15 B of the Dekkhan Agriculturists' Relief Act (Act XVII of 1879). A *rule nisi* was granted calling upon the opponent to show cause why the prayer in the application should not be granted.

Dáji Abáji Khare for the opponent showed cause:—The application was not made until the six months given by the decree had expired. It could not, therefore, be entertained. Once the period had elapsed, there were no proceedings "in the course of which" the order could be made. Such an application ought to be made pending proceedings under the decree. The period given by the decree having expired, the mortgage is foreclosed—*Ládu Chimáji v. Bábáji Khanduji*⁽¹⁾; *Datto Náráyan v. Balwant Náráyan*⁽²⁾. An application for instalments should be made in the course of execution proceedings to the Court which executes the decree. A separate application like the present cannot be entertained—*Gulábpuri v. Pándurang*⁽³⁾.

Shivrám V. Bhandárkar, for the applicant, in support of the rule:—The period of six months mentioned in the decree expired during the Christmas vacation, and we presented the application on the first day on which the Court re-opened. The application is, therefore, within time—*Peary Mohun Aich v. Anunda Charan*⁽⁴⁾. The applicant is an agriculturist, and as such she is entitled to the benefits conferred by the Dekkhan Agriculturists' Relief Act under which there is no foreclosure.

[SARGENT, C. J., referred to *Shankarápá v. Dánápá*⁽⁵⁾. The decree being exhausted by efflux of time, there are no proceedings under the decree before the Court.]

The decree had not exhausted itself when we made the application, because it was made on the day the Court re-opened after the vacation. We submit that, if an order for instalments be now made, it will be a proceeding under the decree. It is not

(1) I. L. R., 7 Bom., 532.

(3) P. J., 1886, p. 142.

(2) P. J., 1885, p. 248.

(4) I. L. R., 18 Calc., 631.

(5) I. L. R., 5 Bom., 604.

1894.

BHA'GI-
RATHIBÁI
v.
HARI RA'VJI
CHIPLUN-
KAR.

1894.

BHA'GI-
RATHIBA'I
v.
HARI RA'VJI
CHIPLUN-
KAR.

necessary that the proceeding should be a proceeding in execution. Under the provision of section 20 of the Dekkhan Agriculturists' Relief Act an order for instalments can be made at any time.

[SARGENT, C. J. :—Such an application must be made to the Court which carries out the decree.]

We made an application to that Court, but it referred us to this Court, as the final decree was passed by this Court in second appeal.

SARGENT, C. J. :—The applicant in this case asks for an order under section 15 B of the Dekkhan Agriculturists' Relief Act that the amount payable by the mortgagor shall be payable by instalments. Such an order, if it can be made at all under the circumstances of this case, as to which we express no opinion, can only be made as being one in "the course of proceedings under the decree," *i. e.*, by the Court which carries out the decree. Such is the view taken by West and Nánábhái, JJ., in *Gulábpuri v. Pándurang*⁽¹⁾. I must, therefore, discharge the rule, and dismiss the application with costs.

Rule discharged.

(1) P. J., 1886, p. 142.

APPELLATE CIVIL.

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

1894.
April 16.

PATEL MAFATLA'L NA'RANDA'S (ORIGINAL PLAINTIFF), APPELLANT,
v. BA'I PARSON ALIAS BA'I ITCHA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Will—Certificate—Regulation VIII of 1827—Amendment of plaint—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 144.

A plaintiff can sue to establish his title under a will without producing a certificate under Regulation VIII of 1827.

Mulchand v. Motichand⁽¹⁾ distinguished.

For the purposes of limitation a suit must be considered to have commenced from the date on which the plaint was originally presented, and not from the date of its amendment.

* Second Appeal, No. 727 of 1892.

(1) 9 Bom. H. C. Rep., 37.