

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

RA'MCHANDRA GOVIND MA'NIK (ORIGINAL DEFENDANT NO. 1), APPELLANT, v. SONO SADA'SHIV SARKHOT AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1894.

July 9.

Practice—Procedure—Civil Procedure Code (Act XIV of 1882), Secs. 566, 569, 574—Remand—Findings on issues—Duty of Appellate Court to form its own opinion on the evidence or record reasons for findings.

In certifying to the High Court the findings on issues sent back on remand and found by the Court of first instance, the lower Appellate Court is, in the absence of any admission by the party against whom the issues have been found, bound to form its own opinion on the evidence and record its findings with the reasons for them.

SECOND appeal from the decision of C. E. G. Crawford, District Judge of Ratnágiri.

The plaintiffs obtained a decree against two brothers, Govind and Náráyan, for possession of certain land. Govind's son, Rámchandra (defendant No. 1), obstructed them in taking possession, and they accordingly applied, under section 328 of the Civil Procedure Code (Act XIV of 1882), for removal of the obstruction, and after the necessary investigation the Court numbered and registered the plaintiffs' application as a suit between the plaintiffs and Rámchandra as defendant under section 331 of the Civil Procedure Code.

Rámchandra contended that his father Govind had given the land to him for his separate enjoyment; that he knew nothing of the decree, and that the plaintiffs must sue for partition.

The Subordinate Judge (Ráo Sáheb S. M. Kále) found that the defendant was bound by the decree, and awarded the plaintiffs' claim.

On appeal by the defendant the Judge (Ráo Bahádur Káshináth Bákrishna Maráthe, First Class Subordinate Judge with appellate powers) confirmed the decree.

The defendant preferred a second appeal and the High Court sent back certain issues to be tried (see Printed Judgments for

* Second Appeal, No. 133 of 1892.

1894.

RÁMCHANDRA
GOVIND
MÁNIK
v.
SONO
SADÁSHIV
SÁRKHOT.

1893, pages 479-80) on which the Subordinate Judge took further evidence and found in favour of the plaintiffs.

The District Judge on receipt of the findings from the Subordinate Judge confirmed them on the 6th March, 1894, for the following reasons:—

“Messrs. Dámle and Bháte, who appeared for Rámchandra at the original hearing of the appeal, state that they have received no instructions to contest these findings of the lower Court. They were received by this Court on the 29th January, so that there has been ample time for them to be instructed.

“In the absence of argument, my findings upon the issues sent down are the same as those of the lower Court.”

The defendant contended that the District Judge ought to have considered the evidence himself.

Náráyan G. Chandávankar for the appellant (defendant):—The Judge has committed an error in law in upholding the findings of the Subordinate Judge merely because no argument was addressed to him against them. He ought to have himself weighed the evidence and formed his opinion upon it—*Bhagván v. Kesur Kaverji*⁽¹⁾, *Umed Ali v. Salima Bibi*⁽²⁾, *Mumtaz v. Futeh Husain*⁽³⁾ and *Bálkrishna v. Náráyan*⁽⁴⁾.

Mánekhsháh J. Taleyáarkhán for the respondents (plaintiffs):—If the defendant was dissatisfied with the findings of the Subordinate Judge, he ought to have instructed his pleaders in appeal in the District Court to raise objections. The Judge asked his pleaders whether they desired to object, and they pleaded want of instructions. The defendant must, therefore, be considered to have acquiesced in the findings of the Subordinate Judge, and the Judge confirmed them.

BAYLEY, Acting C. J.:—In the absence of any distinct admission by the first defendant's pleader that the finding of the Subordinate Judge on the issues was correct, we think the District Judge was bound to form his own opinion on the evidence and record his finding with the reasons therefor—*Bhagván v. Kesur Kaverji*⁽¹⁾, *Umed Ali v. Salima Bibi*⁽²⁾, *Mumtaz v. Futeh Husain*⁽³⁾ and *Bálkrishna v. Náráyan*⁽⁴⁾. We must, therefore, return the papers to

(1) I. L. R., 17 Bom., 428.

(3) *Ibid.*, 391.

(2) I. L. R. 6 All., 383.

(4) P. J. for 1881, p. 331.

the District Court with instructions to record its finding according to law. The proceedings should be returned within two months.

Papers returned.

1894.

RAMCHANDRA
GOVIND
MA'NIK
v.
SONO
SADASHIV
SARKHOT.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

DHONDI (ORIGINAL PLAINTIFF), APPELLANT, v. LAKSHMAN
(ORIGINAL DEFENDANT), RESPONDENT.*

1894.
July 9,

The Dekkhan Agriculturists' Relief Act (XVII of 1879), Sec. 13, Cls. (b), (d), and Sec. 15(1) —Mortgage—Redemption suit—Account—Principal debt how ascertained—Arbitration.

In a redemption suit under the Dekkhan Agriculturists' Relief Act (XVII of 1879) the Court should, in taking an account, form its own opinion on the subject. As the law stands, a mere guess as to the sum of money actually advanced cannot be made in

* Second Appeal, No. 780 of 1892.

(1) Section 13, clauses (b), (d), and section 15 of the Dekkhan Agriculturists' Relief Act (XVII of 1879):—

13. When the Court inquires into the history and merits of a case under section twelve, it shall—

notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account,

and notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation,

open the account between the parties from the commencement of the transactions and take that account according to the following rules (that is to say):—

(a)

(b) in the account of principal there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor as part of the transactions:

(c)

(d) in the account of principal there shall not be debited to the debtor any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transactions, unless the Court, for reasons to be recorded by it in writing, deems such debit to be reasonable.