

On a careful consideration of all the authorities, we feel satisfied that the decision of the lower Court of appeal must be upheld. We accordingly reject the appeal and confirm the decree with costs on appellant.

Decree confirmed.

1895.

KRISHNA-
OHA'RYA
v.
LINGAWA.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade

CHENNAYA (ORIGINAL PLAINTIFF), APPELLANT, v. MALKAPPA
(ORIGINAL DEFENDANT), RESPONDENT.*

1895.

January 29.

Mortgage—Redemption—Decree for payment and redemption within six months—Application for execution of decree after six months had expired—Transfer of Property Act (IV of 1882), Sec. 93.

Section 93 of the Transfer of Property Act (IV of 1882), under which a plaintiff-mortgagor who has obtained a decree for redemption may show cause for extending the time allowed by the decree for redemption, does not apply to decrees made before the Act was put in force.

SECOND appeal from the decision of J. L. Johnstone, District Judge of Dhárwár, in Appeal No. 273 of 1893.

On the 30th August, 1892, the plaintiff obtained a decree for redemption of certain property on payment of Rs. 703-0-7½ within six months.

The plaintiff did not apply for execution of this decree until after the six months had expired.

This *darkhást* was rejected by the Subordinate Judge as being made too late.

On appeal, the District Judge confirmed the order of rejection, on the ground that the Court in execution had no power to enlarge the time mentioned in the decree.

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

Shivrám Vithal Bhandárkar for appellant (plaintiff):—The plaintiff may redeem although the six months have expired under section 93 of the Transfer of Property Act (IV of 1882)

* Second Appeal, No. 604 of 1894.

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he has that right until a final order for foreclosure is made. Under the last clause of that section the Court has the power to enlarge the time for redemption for any sufficient reason. The cases of *Mahant Ishwargar v. Chudásama Mánábhair*⁽¹⁾ and *Chudásama Mánábhair v. Mahant Ishwargar*⁽²⁾ are no longer applicable since the Transfer of Property Act was extended to this Presidency.

B. N. Bhajekar for respondents :—The decree sought to be executed was passed before Act IV of 1882 was applied to this Presidency. It was extended to this Presidency on the 1st January, 1893, while the decree was passed in August, 1892. The Act is not retrospective. Section 93 of the Act does not, therefore, apply in the present case.

JARDINE, J. :—It is urged that section 93 of the Transfer of Property Act (IV of 1882) applies to decrees made before that Act was put in force, and that the procedure in the second clause of that section required the defendant-mortgagee to apply for an order debaring redemption on which, and not till then, the plaintiff would have opportunity to show good cause for extending the period fixed for payment. We are of opinion that as section 93 relates only to proceedings to which section 92 relates, the present decree is not governed by the Transfer of Property Act, the words in the first sentence of section 92—"the Court shall pass a decree ordering"—clearly referring to futurity. We notice also that the effect of this Act does not appear to have been pleaded in the Courts below; nor any intimation given to either of those Courts that there was good cause for extending the time. The decree is confirmed with costs.

(1) I. L. R., 13 Bom., 106.

(2) I. L. R., 16 Bom., 243.