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claimants and their co-sharers *inter se*. The question as to what is to become of that amount after payment into Court has been made, that is, to what particular person it is, to be paid, has yet to be decided. Therefore we say nothing upon that point. The decree will be modified by striking out the portion relating to amounts that may become annually payable. In other respects it is confirmed. Each party will bear his own costs of this appeal.

The same order governs First Appeal No. 107 of 1906.

Decree modified.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

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September 27.

NAVLAJI SARDARMAL (ORIGINAL DEFENDANT), APPELLANT, v. RAMA DHONDI (ORIGINAL PLAINTIFF), RESPONDENT.*

Dekhan Agriculturists' Relief Act (XVII of 1879), section 15D, clause (3) (1) — Suit by mortgagor for account — Application for redemption decree in appeal — Redemption decree passed by Court in appeal — Decree in the suit — Interpretation.

In a suit for an account brought by a mortgagor under the provisions of the Dekhan Agriculturists' Relief Act (XVII of 1879) the Court found that a

* Second Appeal No. 38 of 1909.

(1) Section 15D, clauses (1), (2) and (3) of the Dekhan Agriculturists' Relief Act (XVII of 1879) run as follow :—

15 D. (1) Any agriculturist whose property is mortgaged may sue for an account of the amount of principal and interest remaining unpaid on the mortgage and for a decree declaring that amount.

(2) When any such suit is brought the amount (if any) remaining unpaid shall be determined under the same rules as would be applicable under this Act if the mortgagee had sued for the recovery of the debt.

(3) At any time before the decree in the suit is signed, the plaintiff may apply to the Court to pass a decree for the redemption of the mortgage, or the mortgagee, if he would then have been entitled to sue for foreclosure or sale, may apply to the Court to pass a decree for foreclosure or sale (as the case may be), instead of a decree merely declaring the amount remaining unpaid, and the Court may, if it thinks fit, grant the application.

sum of Rs. 100 was due by the plaintiff to the defendant. The defendant appealed. The appellate Court, on the plaintiff's application that his suit should be treated as one for redemption, passed a decree for redemption on payment of Rs. 49-2-0 by the plaintiff to the defendant.

The defendant preferred a second appeal contending that the words "the decree in the suit" in section 15D, clause (3) of the Act meant decree in the original Court and not of the Court of Appeal.

Held, dismissing the second appeal, that when the decree of the lower Court is reversed or varied in appeal, the decree of the appellate Court becomes the decree in the suit which is to be executed in execution proceedings.

SECOND appeal from the decision of Gulabdas Laldas, First Class Subordinate Judge of Nasik with appellate powers, varying the decree passed by V. D. Joglekar, Subordinate Judge of Pimpalgaum.

The plaintiff sued under the provisions of section 15D of the Dekkhan Agriculturists' Relief Act (XVII of 1879) for an account of the amount due on a registered mortgage bond for Rs. 160, dated the 3rd April 1897.

The defence was that the profits of the land were not sufficient to cover even the interest due on the principal.

The Subordinate Judge took the account and found that Rs. 100 were due by the plaintiff to the defendant under the mortgage. He, therefore, made a declaration accordingly.

The defendant appealed and at the hearing of the appeal, the plaintiff (the present respondent) applied to the Court that his suit should be treated as one for redemption and a decree should be passed for the redemption of the mortgaged property. The appellate Court granted the application and passed a decree in the following terms:—

The decree of the Lower Court is varied and it is hereby directed that the plaintiff do pay to the defendant Rs. 49-2-0 (forty-nine rupees and two annas) and his costs in both the Courts on 12th April 1909 and the defendant do deliver possession of the plaint lands to the plaintiff on the date aforesaid, free from all incumbrances, that the defendant do deliver such documents as he may have relating to the lands, that in default of the plaintiff making the payment on the due date, the defendant may apply for a proper order under paragraph 2 of section 15B of the Dekkhan Agriculturists' Relief Act, that

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the sum of Rs. 49-2-0 shall bear interest at 12 per cent. from 13th April 1909 till satisfaction and the defendant shall be liable to render accounts of the profits, &c., till delivery of possession. The plaintiff (respondent) bears his costs throughout.

Defendant preferred a second appeal.

R. R. Desai for the appellant (defendant):—This was originally a suit for account under section 15D, clause (1) of the Dekkhan Agriculturists' Relief Act and the amount due under the account was declared by the first Court in its decree. The plaintiff was satisfied with that decree and he did not appeal against it, nor did he present an application to the first Court under section 15D, clause (3) of the Act. The words in the clause are specific—"before the decree in the suit is signed" which cannot mean a decree in appeal.

[BACHELOR, J.:—What benefit is there to the defendant whether the decree for redemption is passed in the present suit or in some other suit?]

Under the Act the defendant is not liable for the surplus profits and if he continues in possession until the result of a separate suit he will be benefitted to the extent of the profits which he will get till then. We want to take advantage of this peculiarity though it may be apparently unfair.

M. R. Bodas for the respondent (plaintiff):—The words "the decree in the suit" in clause 3 of section 15 D of the Dekkhan Agriculturists' Relief Act do include the decree of the appellate Court because an appeal is a continuation of the suit. Those words mean any final decree whether of the first Court or of the appellate Court.

SCOTT, C. J.:—The only point which we are called upon to decide in this appeal is whether the learned Judge of the appellate Court was right in passing a redemption decree for the plaintiff on his application when the case came before him in appeal.

It is argued on behalf of the appellant that the words of section 15D, clause (3) of the Dekkhan Agriculturists' Relief Act are only susceptible of the interpretation which he contends for, namely, that "the decree in the suit" means the

decree of the original Court and not of the Court of appeal. It would follow that if the Court of appeal reversed the decree of the lower Court and passed an entirely new decree it would not be "the decree in the suit" though it would be the only existing decree capable of execution. If the words had been "a decree" there would have been more force in the argument. When the decree of the lower Court is reversed in appeal, or varied in appeal, the decree of the lower appellate Court becomes the decree in the suit which is to be executed in execution proceedings. We, therefore, think that the learned Judge of the lower Court acted within his powers in granting the application of the plaintiff for a decree for redemption.

We dismiss the appeal with costs.

Appeal dismissed.

G. B. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

SHANKAR RAMKRISHNA CHOLKAR (ORIGINAL PLAINTIFF), APPELLANT,
v. KRISHNAJI GANESH BADE AND OTHERS (ORIGINAL DEFENDANTS),
RESPONDENTS.*

1909.

September 28.

*Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2, clause 2(1)—
Amending Act (XXIII of 1881)—Ratnāgiri District—Mortgage of 1881—
Suit for account—Agriculturist.*

The plaintiff whose land and residence was in Ratnāgiri District executed a mortgage in the year 1881. The Dekkhan Agriculturists' Relief Act (XVII

* First Appeal No. 106 of 1908.

(1) Section 2, clause 2 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) runs as follows:—

2. In construing this Act, unless there is something repugnant in the subject or context, the following rules shall be observed namely:

1st

Second.—In Chapters II, III, IV and VI, and in section 69, the term "Agriculturist," when used with reference to any suit or proceeding, shall include a person, who, when any part of the liability which forms the subject of that suit or proceeding was incurred, was an agriculturist within the meaning of that word as then defined by law.