

law which I have stated that the plaintiff has not a right to resume these lands merely because he chooses to dispense with the services.

There then remains the question: Has the defendant in fact refused to render service. On this point there is no finding by the District Judge, for he deemed it unnecessary to find on it. Therefore under the law as it now stands, because we think it was incumbent on the District Judge to find on this issue, it is for us to look into the evidence and to come to a finding on it for ourselves. We have looked into the evidence and we are satisfied that it cannot be said that it is proved that the defendant in fact refused to render service.

Therefore the plaintiff has failed to make out any just or legal ground for ejecting the defendant from these lands. Consequently the decree of the Court of first appeal must be reversed and that of the Court of first instance restored.

The appellant here should have her costs in the Court of first appeal and in this Court.

SHAH, J. :—I concur.

*Appeal allowed.*

R. R.

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### APPELLATE CIVIL.

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*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Beaman.*

LAXMANDAS HARAKCHAND (ORIGINAL DEFENDANT), APPELLANT, v.  
BABAN WALAD BHIKARI (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Delikhan Agriculturists' Relief Act (XVII of 1879), sections 13, 15D and 16—  
Monetary dealings, mortgages and promissory notes—Suit for general account  
and redemption—One general account of mortgage and promissory note trans-  
actions—Mortgages found to be satisfied—Surplus profits under mortgage trans-  
actions applied in reduction of the claim on promissory notes—Provision of the*

\* Appeal No. 166 of 1913.

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*Dekkhan Agriculturists' Relief Act (XVII of 1879) for two different classes of suits for account by agriculturists—Sections 15D and 16 of the Act—Mortgage account entirely separate from the promissory note account—Mortgagee not accountable for surplus profits under mortgage transactions.*

In a suit for general account under the Dekkhan Agriculturists' Relief Act (XVII of 1879) and for redemption of mortgaged property, the plaintiff combined his claim for account of the mortgage transactions with his claim for an account of moneys lent upon promissory notes. In taking an account, the Court made up one general account of the mortgage transactions and the promissory note transactions and having found that the mortgages were satisfied, applied the profits subsequent to the date of the satisfaction of the mortgage debts in the account in reduction of the amount due to the defendant on the promissory notes.

*Held* that the account could not be accepted.

The Dekkhan Agriculturists' Relief Act (XVII of 1879) has made provision for two different classes of suits for account by agriculturists. Section 15D of the Act relates purely and exclusively to mortgage transactions. Under that section the plaintiff-agriculturist may have either a declaration of the amount due or he may combine a declaration of the amount due with a decree for redemption. Section 16 of the Act entitles the plaintiff to sue for a general account of money dealings between him and the lender and for a bare declaration of the amount due without any relief being claimed. Thus the two sections where accounts are contemplated stand on a different footing. Under the Act the mortgage account must be treated as entirely separate from the promissory note account so that the lender mortgagee would not be accountable for surplus profits received by him after the date when the mortgage claims were satisfied.

*Janoji v. Janoji*<sup>(1)</sup> and *Ramchandra Baba Sathe v. Janardan Apaji*<sup>(2)</sup>, referred to.

APPEAL against the decision of M. N. Choksi, Additional First Class Subordinate Judge of Dhulia, in suit No. 943 of 1910.

Suit by an agriculturist for account.

The plaintiff, a Mahomedan agriculturist who possessed considerable immoveable property consisting of fields, had several monetary dealings with the defendant, his creditor. The said dealings were squared

<sup>(1)</sup> (1882) 7 Bom. 185.

<sup>(2)</sup> (1889) 14 Bom. 19.

off in the year 1892 and since then new dealings commenced. On the 13th August 1897 the defendant took two mortgage bonds from the plaintiff for Rs. 7,000, and further, on the 6th September 1900, he took two other mortgage bonds from the plaintiff for Rs. 12,500. The mortgages were with possession. Subsequently on the 24th December 1903 another mortgage bond was taken by the defendant from the plaintiff for Rs. 2,000. This mortgage was also with possession. The dealings between the plaintiff and the defendant continued up to the year 1909 and four promissory notes were passed by the plaintiff to the defendant to cover unsecured debts.

On the 25th November 1909 the defendant filed four suits against the plaintiff in the Court of the Subordinate Judge of Jalgaon to recover the amount due on the said four promissory notes. The plaintiff also on the 3rd November 1910 filed the present suit against the defendant in the Court of the First Class Subordinate Judge of Dhulia for a general account and redemption of the mortgaged properties under the provisions of the Dekkhan Agriculturists' Relief Act alleging that the income of the mortgaged properties had fully satisfied the debts due to the defendant. In consequence of the plaintiff's suit being filed in the Court at Dhulia, the four suits filed by the defendant in the Jalgaon Court were transferred to Dhulia. After the transfer of the suits the defendant contended that a joint account of the secured and unsecured debts should not be taken and that future interest should be awarded on the instalments.

The Subordinate Judge found that the plaintiff's prayers for taking an account of the secured and unsecured debts were properly joined, that the defendant's mortgages were fully satisfied from the profits received by him of the mortgaged properties up to April 1906 and that the debts due to the defendant

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under the promissory notes were wiped out by the profits received by him subsequent to April 1906.

A decree was, therefore, passed in plaintiff's favour ordering "that as the defendant is fully paid off, all the mortgaged estate is now free from the mortgage lien of the defendant and the defendant should pass a reconveyance of the said property at the plaintiff's expense, if the plaintiff so desires."

Defendant appealed.

*G. S. Rao*, for the appellant (defendant) :—The lower Court took accounts on a wrong principle. Under the rulings of this Court the account of the debts due on various promissory notes could not be taken along with the account of the various mortgage bonds: *Janoji v. Janoji*<sup>(1)</sup>, *Ramchandra Baba Sathe v. Janardan Apaji*<sup>(2)</sup>, *Vishnu Keshav Joshi v. Satwaji valad Tulsaji Navale*<sup>(3)</sup>. The mode adopted by the lower Court for making accounts has prejudiced the appellant inasmuch as the surplus due after the satisfaction of the mortgage debt has gone on towards the discharge of the liability under the promissory notes. Moreover, the separate placing of sections 15D and 16 of the Dekkhan Agriculturists' Relief Act is important in this connection.

*P. B. Shingne*, for the respondent (plaintiff) :—There is a connection between the promissory notes and mortgages. Some of the promissory notes were in connection with transactions arising under the mortgages, *e. g.*, some of the promissory notes were connected with the payment of assessment of the mortgaged properties and costs of cultivation. The transactions being thus connected, one account of all the debts could be taken having regard to the wide language of section 13 of the Dekkhan Agriculturists' Relief Act. Section 15D and section 16 of the Act point to the same conclusion.

<sup>(1)</sup> (1882) 7 Bom. 185.

<sup>(2)</sup> (1889) 14 Bom. 19.

<sup>(3)</sup> (1897) P. J. 87.

The separate placing of the two sections is a matter of arrangement: *Hari v. Lakshman*<sup>(1)</sup>, *Bhanu Balaji v. Hari Nilkanthrao*<sup>(2)</sup>, and *Laluchand v. Girjappa*<sup>(3)</sup>. It cannot affect the principle of taking one account of all the debts.

SCOTT, C. J.:—The defendant in this suit has had dealings with the plaintiff for many years, and has advanced money to him upon mortgage, and balances due on old accounts have been secured by the mortgage of property of the plaintiff. The mortgage-bonds outstanding at present are Exhibits 63, 64 and 65, which do not all relate to the same property, Exhibit 65 relating to property entirely different from that to which Exhibits 63 and 64 relate. The last of these mortgage-bonds was executed in December 1903. Further monetary dealings took place between the plaintiff and the defendant which are evidenced by promissory notes commencing with the 1st of August 1905. The defendant in 1909 and 1910 brought four suits in the Jalgaon Court upon promissory notes executed by the plaintiff subsequent to July 1905.

The plaintiff then instituted a suit for a general account under the Dekkhan Agriculturists' Relief Act, and for redemption of the mortgaged property, and upon his application the four suits filed in Jalgaon on promissory notes were transferred by the District Court, Khandesh, to the First Class Subordinate Judge in Dhulia. That Judge has now tried the plaintiff's suit for account and redemption, and in taking an account he has made up one general account of the mortgage transactions and the promissory note transactions. The mortgages, he finds, were satisfied by profits received by the defendant some time prior to April 1906, and he has taken the

(1) (1881) 5 Bom. 614.

(2) (1883) 7 Bom. 377.

(3) (1895) 20 Bom. 469.

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defendant as being in receipt of profits at the rate of Rs. 2,000 a year under his mortgages, which profits subsequent to the date of the satisfaction of the mortgage debts he has applied in the account in reduction of the defendant's claim upon the promissory notes.

That manner of taking an account has been challenged in this appeal. It is contended on behalf of the defendant that every mortgage of separate property, even where the suit relates to more than one mortgage, must be the subject of separate account under section 13 of the Dekkhan Agriculturists' Relief Act, and that under each separate mortgage the mortgagee is entitled to retain such surplus profits as he may have got before the date of the redemption suit or the date of the redemption decree, and as an authority for that contention the judgments of Sir Charles Sargent in *Janoji v. Janoji*<sup>(1)</sup> and *Ramchandra Baba Sathe v. Janardan Apaji*<sup>(2)</sup> are referred to. Now if those authorities apply here they are binding upon us. But it appears to me that the case may be decided in favour of the appellant upon a somewhat different ground.

The mortgagor's right to file a suit for an account and redemption rests upon the provisions of the Dekkhan Agriculturists' Relief Act, and that Act makes provision for two different classes of suits for account by agriculturists. Under section 15D a suit for an account may be filed by a mortgagor-agriculturist even where the time named for payment has not yet expired under the mortgage, and he may have either a declaration of the amount due on the mortgage, or he may combine a declaration of the amount due with a decree for redemption. That is a section which relates purely and exclusively to mortgage transactions. Then there is another section,

(1) (1882) 7 Bom. 185.

(2) (1889) 14 Bom. 19.

section 16, which enables him to sue for a general account of money dealings between him and the lender, and that section 16 enables him to sue for a bare declaration of the amount due without any relief being claimed. It says :—“ Any agriculturist may sue for an account of money lent or advanced . . . by a creditor . . . and for a decree declaring the amount, if any, still payable.” But naturally he does not require any further reliefs than that. The plaintiff does not wish to be authorized to pay if the payment is inconvenient to him, as soon as the amount due is ascertained. Therefore, the two sections where accounts are contemplated stand on a different footing. The plaintiff here, however, has combined his claim for account of the mortgage transactions with his claim for an account of the moneys lent upon promissory notes, and he has sought to import the relief to which he is entitled by way of redemption under section 15D into his claim for an account under section 16, and thus to get the benefit of surplus profits remaining in the hands of the mortgagee under the usufructuary mortgage. This we do not think he is permitted to do by the provisions of the Act, and if it were necessary to go further, it would be sufficient to point out that the result would be contrary to the decisions of Sir Charles Sargent which I have already referred to.

We, therefore, cannot accept the account taken by the lower Court, and the decree must be set aside and the suit remanded for a fresh account, treating the mortgage account as entirely separate from the promissory note account, so that the lender mortgagee will not be accountable for surplus profits received by him after the date when it has been found that the mortgage claims were satisfied.

The other point relating to the account which was argued on behalf of the appellant related to the amount of profits with which the mortgagee has been charged,

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namely, Rs. 2,000 per annum. We do not think that we should interfere with the decision of the lower Court upon that point which was come to after careful consideration of all the evidence, for we are not satisfied that the lower Court was wrong.

As the learned pleaders for the parties do not wish the mortgage account to be re-opened, or to be taken again, we remand the case simply in order that the promissory note account may be taken separate from the mortgage account. The plaintiff will be entitled to take back his mortgaged property on the footing of the mortgages having been discharged, and the suits on promissory notes will be dealt with by the lower Court in accordance with the result of the promissory note account upon the basis indicated in this judgment.

The defendant must pay half the costs in the lower Court and have his costs of this appeal. One set of costs to be set off against the other. The rest of the costs of the suit on remand to be dealt with by the lower Court.

*Decree set aside and suit remanded.*

G. B. R.

## APPELLATE CIVIL.

*Before Mr. Justice Beaman and Mr. Justice Hayward.*

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August 13.

UMABAI BHRATAR SHANKAR GODBOLE (ORIGINAL PLAINTIFF), APPELLANT, v. AMRITRAO ANANT AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Decree—Execution—Garnishee order—Revenue payable on estate ordered to be paid into Court—Revenue in future can be ordered to be paid—Civil Procedure Code (Act V of 1908), Order XXI, Rule 52—Darkhast kept alive, as long as the decree remains unsatisfied—Practice and procedure.*

Under a consent decree the sum found due was made payable in instalments; and the plaintiff was to be put in possession of the defendants' lands and also

\* First Appeal No. 209 of 1912.