

THE
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APPELLATE CIVIL.

Before Sir Stanley Batchelor, Kt., Acting Chief Justice and
Mr. Justice Kemp.

MAREPPA *bin* PANDITEPPA BHOJANNAVAR (ORIGINAL DEFENDANT),
APPELLANT *v.* GUNDO ANNAJI DESHPANDE KULKARNI AND
ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1918.

February 41.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 13 (d)—Suit for accounts—Original mortgage transaction merged in a decree—Subsequent mortgage in satisfaction of part of the decretal debt—Whether the amount of the mortgage be regarded as principal sum in taking accounts—Court's power to go behind the decree.

The defendant mortgagee had obtained a decree against the plaintiffs and other mortgagors for a certain amount. In satisfaction of their share of the decretal debt, the plaintiffs passed a mortgage bond in favour of the defendant for Rs. 1,480. The plaintiffs having sued for accounts on the mortgage under the Dekkhan Agriculturists' Relief Act, 1879, the lower Courts treated Rs. 866 out of the mortgage amount as representing the original principal under the earlier decree and allowed interest only on that sum. On appeal to the High Court,

Held, that Rs. 1,480 should be regarded as the principal amount for the purpose of taking accounts. Section 13 of the Dekkhan Agriculturists' Relief Act, 1879, allowed the Court to go behind the private settlement or a private contract but it did not empower the Court to go behind a civil Court's decree in which any preceding contract between the parties was merged.

SECOND appeal against the decision of N. J. Wadia, Assistant Judge at Belgaum confirming the decree

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passed by B. N. Hublikar, Joint Subordinate Judge at Belgaum.

Suit for accounts.

In 1891, plaintiff's father passed a mortgage bond for Rs. 1,500 with possession in favour of the defendant.

In 1896, the defendant obtained a decree on his mortgage against the plaintiffs and their bhaubands for Rs. 3,132-10-0 made up of Rs. 1,500 principal, Rs. 233 costs and the balance interest. The plaintiffs' share of that liability was Rs. 1,566-5-0 and in respect of which they passed a mortgage bond for Rs. 1,480 with possession on August 17, 1898.

In 1914, the plaintiffs brought a suit under the Dekkhan Agriculturists' Relief Act, 1879, to take accounts of the mortgage of 1898 executed by them to the defendant and for a declaration as to the sum due on it.

The defendant contended *inter alia* that they obtained a decree in Suit No. 351 of 1896, against plaintiffs and their bhaubands; that the plaintiffs passed the suit mortgage bond in respect of their share of the decretal debt and that the accounts of the previous dealings between the ancestors of the plaintiffs and the defendant could not be re-opened.

The Subordinate Judge in taking accounts of the mortgage transaction split up the sum of Rs. 1,480 into Rs. 866 as the principal (made up of Rs. 750, half the original principal of Rs. 1,500; plus Rs. 116-12-0 half of the total costs Rs. 233-8-0) and interest Rs. 613-4-0. Taking accounts on this basis he found that the plaintiffs were liable to pay Rs. 386-10-0 to the defendant.

On appeal by the defendant, the Assistant Judge confirmed the decree.

The defendant preferred a second appeal to the High Court.

G. S. Mulgaonkar (for *T. R. Desai*), for the appellant :—
The appellant was entitled to one-half of Rs. 3,132-10-0 the amount of the decree. He could have executed the decree and realized the amount in whatever way it was made up. The respondent agreed to execute and did execute a mortgage in lieu of it. The Dekkhan Agriculturists' Relief Act nowhere provides that a transaction though private yet superseding a decree can be opened up and its component parts examined. Section 13 (d) of the Act relates to a transaction, the result of a private contract.

The point has been settled by this Court in *Tatyja Vithoji v. Bapu Balaji*⁽¹⁾.

W. G. Nimbkar, for the respondents :—I rely upon *Kisandas v. Ramchandra*⁽²⁾.

The mortgage transaction was a private arrangement and therefore the Court could re-open the same to see how much of it was accumulated interest.

BATCHELOR, Acting C. J. :—This was a suit under the Dekkhan Agriculturists' Relief Act to take accounts of a mortgage executed by the plaintiffs to the defendant, and for a declaration as to the sum due upon it. The defendant obtained a decree against the plaintiffs and their Bhaubands for Rs. 3,132-10-0, made up of Rs. 1,500 principal, Rs. 233 costs and the balance interest. The plaintiffs' share admittedly was one-half. But by reason of a remission this sum was reduced to Rs. 1,480 only for which a mortgage was made.

The question before us is whether under the Dekkhan Agriculturists' Relief Act this sum of Rs. 1,480, part of the decretal debt, is to be regarded as the principal sum, or whether for the purposes of the agriculturist mortgagor it can now be

(1) (1883) 7 Bom. 330.

(2) (1911) 13 Bom. L. R. 1009.

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resolved into its component elements of Rs. 866 principal and Rs. 614 interest. Now the section of the Act admittedly applicable to the present circumstances is section 13. Clause (d) is especially cited by the learned Judge below, who holds that the only principal chargeable against the debtor is the original sum of Rs. 866. But I do not find that that view is warranted by the provisions of section 13 which enacts that "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." But here this original interest has not been converted into principal at any statement or settlement of account or by any contract made between the parties. The conversion has taken place by means of the decree of the Court, and by that decree a single integral sum was awarded to the defendant as a judgment-debt. Upon the mere provisions of the Act, therefore, I should be of opinion that the defendant's contention is right, and that he must be allowed interest upon the judgment of Rs. 1,480. This view is confirmed by the decision of this Court in *Tatya Vithoji v. Bapu Balaji*,⁽¹⁾ where Mr. Justice West points out that where a contract has been made the subject of adjudication by the Court, it is thenceforward merged in the decree, and there is no warrant for the revision of the decree, or the opening up of the account upon that footing. No doubt section 13 allows the Court to go behind the private settlement or a private contract, but I can find nothing in it which empowers the Court to go behind a civil Court's decree in which any preceding contract between the parties is necessarily merged. The learned Judge below relied for his decision upon *Kisandas v. Ramchandra*.⁽²⁾ But it

(1) (1883) 7 Bom. 330.

(2) (1911) 13 Bom. L. R. 1009.

appears to me that this case affords no authority for the Judge's determination. The only point there decided, as I read the learned Judge's judgment, was whether the Court's sanction to a certain mortgage bond under section 257A of the old Code of Civil Procedure, debarred the trial Judge from going into the question whether the principal sum shown in the mortgage bond consisted partly of interest or not. It was decided that the Court had jurisdiction to go into that question notwithstanding the Court's sanction of the mortgage bond. There was no decision to the effect that under the Dekkhan Agriculturists' Relief Act the Court is empowered to go behind a previous decree, and to resolve that judgment-debt into principal and interest, and the only observation occurring on this point in the judgment is clearly obiter.

On these grounds, I am of opinion, that the appeal should be allowed, and that the interest must be calculated on the sum of Rs. 1,480. At the request of the pleaders, the appeal will be remanded to the lower Court in order that the decree may be amended in accordance with this judgment. The appellant to have his costs. The cross-objections are dismissed with costs.

KEMP, J. ;—There appears to me to be another reason why this appeal should succeed. The decree in suit No. 351 of 1896 was for Rs. 3,132-10-0. The plaintiff's share of that liability was Rs. 1,566-5-0, and, on the 17th August 1898, the mortgage bond for Rs. 1,480 with possession was passed. Now, if the mortgagor had not agreed to pay Rs. 1,480, who can say whether the judgment-creditor would not have insisted on receiving the whole amount of the principal in Suit No. 351 of 1896 from him? The judgment-creditor agreed to take approximately half the amount of the decree, the whole

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of which he might have executed against his judgment-debtor. That being so, the mortgagor cannot now be allowed to say that he is only liable to pay half the amount of principal. I, therefore, agree that the appeal should be allowed with costs and the case remanded for amendment of the decree.

Decree reversed.

J. G. R.

APPELLATE CIVIL,

Before Mr. Justice Beaman and Mr. Justice Heaton.

1918.

February 15.

TULLA SOBHARAM PANDYA (ORIGINAL PLAINTIFF), APPELLANT v. THE COLLECTOR OF KAIRA (ORIGINAL DEFENDANT), RESPONDENT.*

Land Revenue Code (Bombay Act V of 1879), sections 144, 160† (as amended by the Gujarat Talukdars' Act, Bombay Act, VI of 1888, section 33)—Talukdar—Payment of Jama to Government in lump sum for the whole village—Grant of lands rent free by the Talukdar—Attachment of village by Government consequent upon non-payment of Jama by Talukdar—Right of Government to recover proportionate assessment from the grantee of rent-free lands.

* First Appeal No. 237 of 1915.

† The sections run as follows:—

144. If owing to disputes amongst the sharers, or for other cause, the Collector shall deem that there is reason to apprehend that the land-revenue payable in respect of any holding consisting of an entire village or of a share of a village will not be paid as it falls due, he may cause the village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

The provisions of section 160 shall apply to any village or share of a village so attached, and all surplus profits of the land attached, beyond the cost of such attachment and management, including the payment of the land-revenue and the cost of the introduction of a revenue-survey, if the same be introduced under the provisions of section 111, shall be kept in deposit for the eventual benefit of the person or persons entitled to the same, or paid to the said person or persons from time to time as the Collector.....may direct.