should be joined. If authority for that proposition be required reference should be made to the case of *Hanmandas Ramdayal* v. *Valabhdas*[1] decided by Sir Stanley Batchelor.

Decree accordingly.

R. R.

[1] (1918) 43 Bom. 17.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

RAMJI VALAD BAPUJI PATIL (ORIGINAL PLAINTIFF), APPELLANT v. PANDHARINATH VALAD RAVJI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1918. *October* 4.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 15 B—Mortgage decree—Decree nisi.

A decree in a redemption suit under the provisions of the Dekkhan Agriculturists' Relief Act provided that on mortgagor paying a certain amount within twelve months he would be entitled to redeem or in default the mortgagee should recover the amount by sale of the mortgaged property.

Held, that on the terms of the decree, it was substantially a decree *nisi* and was not one of the variants permitted by section 15 B of the Dekkhan Agriculturists' Relief Act, 1879.

SECOND appeal against the decision of R. B. Gogte, First Class Subordinate Judge, A. P., at Nasik, confirming the decree passed by D. T. Chaubal, Second Class Subordinate Judge at Sinnar.

The facts of this case are fully stated in the Full Bench report of *Ramji* v. *Pandharinath*[1].

S. R. Bakhale, for the appellant.

P. B. Shingne, for respondents Nos. 6 to 9.

* Second Appeal No. 15 of 1917.

[1] See *ante* p. 334.

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BEAMAN, J.:—The point we referred to the Full Bench was simply this; whether a mortgagor, who has brought a suit for redemption and obtained a decree *nisi*, which neither the mortgagor nor the mortgagee has applied to be made absolute, can, after the execution of that decree is time-barred, bring a fresh suit for redemption. It is very clear that the opinion of the Full Bench upon this point was in agreement with our own; viz., that the mortgagor, whether the decree *nisi* was obtained in a suit for redemption or in a suit for sale, could not be held under the principle of *res judicata* barred from bringing a second suit to enforce his equity of redemption unless the decree *nisi* had been converted by the mortgagee into a decree absolute. It is to be noted that it is the mortgagee, and the mortgagee only, who has any interest whatever in obtaining the decree absolute. Whether the first suit is brought by the mortgagor or by the mortgagee to have property sold, all the conditions are really imposed upon the mortgagor, failing which the mortgagee may proceed to recover his money by sale of the property. This being so I think it is perfectly clear that confining ourselves to mortgage decrees in the mofussil unaffected by the provisions of the Dekkhan Agriculturists' Relief Act, no suit of the kind instituted by the mortgagor to redeem, in which a decree *nisi* has been obtained and not made absolute against him by the mortgagee, would be *res judicata* against him so as to extinguish his equity of redemption. Considerable doubt appears to have been felt whether or not the special provisions of the Dekkhan Agriculturists' Relief Act affect this principle. It appears to me, speaking in the most general terms, that unless it can be shown that a mortgage decree under the Dekkhan Agriculturists' Relief Act is not, as all other mortgage decrees are, preceded by a decree *nisi*, or in other words that the

procedure under the Dekkhan Agriculturists' Relief Act eliminates the stage of the decree *nisi* altogether, there is no reason whatever to complicate the very clear and uniform principle I have stated by introducing distinctions between cases decided under the special Act and the general law. Unfortunately, the provisions of the Dekkhan Agriculturists' Relief Act in this respect are of a kind which certainly in one instance may make the theoretical application of the general principle as standing upon the uniformity of procedure in all mortgage suits, whether under the special Act or not, a little difficult to maintain. I refer now of course to such a case as came before Batchelor and Shah JJ.—*Kashinath Vinayak* v. *Rama Daji*.[1] If the learned Judges meant to go beyond the particular facts of that case and lay down the general rule that decrees in mortgage suits under the Dekkhan Agriculturists' Relief Act were always from the first absolute, that is to say, that no decrees *nisi* are ever made under that Act, I should hesitate to give my assent to that general principle. I do not think, however, that the learned Judges meant to decide more than the actual case before them. It is a self-evident proposition that if a decree *nisi*, or what would be a decree *nisi* as generally understood, is a final decree, then the whole reason for the rule which has been as I understand affirmed by the Full Bench disappears, and there would be no room for any argument, much less for any reference to a Full Bench upon such an admitted showing of fact. The question was from the first dependent upon there being a decree *nisi* which had never been made a decree absolute. Now, if that be so, it follows that assuming, as I do assume here, that this decree, although made under the provisions of the Dekkhan Agriculturists' Relief Act, was no more than a decree *nisi*, section 47 of the Civil Procedure Code can have no appli-

[1] (1916) 40 Bom. 492.

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cability whatever. Section 47 is confined to decrees, that is to say, of course to final decrees. It is only when such a decree has been made that execution proceedings properly speaking come into being at all. Therefore, where the stage reached is no more than a decree *nisi*, having in contemplation for its legal completion a decree absolute, it appears to me that the procedure need not be complicated by any reference whatever to section 47. In my opinion we are giving effect to the intention of the majority of the Full Bench by taking that judgment to mean that in the present case the plaintiff is not barred by the principle of *res judicata* from bringing a second suit, the suit that is to say with which we are dealing, and therefore the lower Court was wrong in dismissing that suit.

The judgment of the lower appellate Court must, therefore, be reversed, and the case remanded, to be dealt with according to law in the light of the foregoing observations.

Costs will abide the final result.

HEATON, J.:—Were it not for one disturbing element there is no doubt as to what would follow from the judgments of the Judges of the Full Bench. We should hold that the case had been wrongly decided on a preliminary point and must be remanded to be heard over again; and that in fact is the order we do make because we both of us agree that the disturbing element does not really operate in this case. That disturbing element is the possibility of there being under the Dekkhan Agriculturists' Relief Act a decree in a redemption suit which is not a decree *nisi*. But from the description of the decree that we are concerned with given in the judgment of my Lord the Chief Justice, it appears that decree is substantially a decree *nisi* and is not one of those peculiar variants which can be made

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under section 15B of the Dekkhan Agriculturists' Relief Act. In the case of *Kashinath Vinayak* v. *Rama Daji*[1], the Judges were dealing with an instalment decree and that was one of the variants permitted by section 15B. It was in fact a decree very different in substance from a decree of the kind called a decree *nisi*. Section 15B, as I understand it, refers primarily and is intended so to refer, to decrees for redemption, foreclosure or sale and in so doing I think it refers to such decrees, and primarily means such decrees as are provided for by the ordinary law, that is by the Code of Civil Procedure. But it also gives the Judge power to depart from the ordinary terms of such decrees and to make special terms and special provisions. Where, however, special terms and special provisions are not made, it seems to me that the decree, although it is made in a suit which comes under the Dekkhan Agriculturists' Relief Act, is a decree of the ordinary kind. Such appears to be the case here.

Therefore, I think the order which should be made is that which has already been stated.

Decree reversed and case remanded.

J. G. R.

[1] (1916) 40 Bom. 492.

APPELLATE CIVIL.

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

1918.

October 10.

BASAPPA REVANSHIDAPPA (ORIGINAL DEFENDANT No. 1), APPELLANT v. SIDRAMAPPA REVANSIDAPPA DHANSHETTI AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT No. 3), RESPONDENTS.*

Hindu Law—Adoption—Adoption by two widows—Special authority—Widow married first has a preferential right to adopt—Competency of minor to adopt—Age of discretion.

* First Appeal No, 307 of 1916.