

1921.

HIRACHAND  
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ABA LALA.

to hold that the order of the 7th January 1904 was a decree which has now to be executed, the present Darkhast is out of time. For the reasons already given, I think that the order of the 7th January 1904 was merely an order in execution, and not a fresh decree. The decision, therefore, of the learned Assistant Judge was right and the appeal must be dismissed with costs.

*Appeal dismissed.*

R. R.

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APPELLATE CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

1921.  
December 21.

VITHALDAS BHAGWANDAS (ORIGINAL PLAINTIFF), APPELLANT  
v. MURTAJA HUSHEIN SYED AND OTHERS (ORIGINAL DEFENDANTS)  
RESPONDENTS\*.

*Dekkhan Agriculturists' Relief Act (XVII of 1879), section 12—Accounts—  
Amount due under bond—Larger amount awarded as result of accounts—  
Proper relief.*

The defendants executed in 1892 a mortgage-deed for Rs. 15,000, agreeing to pay off the amount in annual instalments of Rs. 500 each. The instalments were duly paid up to the year 1903 ; after which there was default in payment. The plaintiff sued in 1916 to recover the amount of twelve instalments that had accrued due. The defendants pleaded that they were agriculturists ; and a Commissioner was appointed to take accounts under the provisions of the Dekkhan Agriculturists' Relief Act. The Commissioner found that the sum of Rs. 6,231-10-0 was due for principal and allowed a like amount for interest. The trial Judge, however, was of opinion that only Rs. 3,200 were due for principal and passed a decree for Rs. 6,400 inclusive of interest. The plaintiff having appealed :—

*Held*, that although on the report of the Commissioner there appeared payable, for principal and interest, the sum of Rs. 12,463-4 0, yet, inasmuch as there remained only Rs. 9,500 due on the bond itself, a decree for that amount only should be passed.

\* First Appeal No. 346 of 1920.

FIRST appeal from the decision of S. S. Phadnis, First Class Subordinate Judge at Bijapur.

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Suit to recover money due on mortgage.

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The defendants executed a deed of mortgage for Rs. 15,000 on the 20th December 1892 agreeing to repay the amount in annual instalments of Rs. 500 each.

Till 1903 the instalments were duly paid ; but thereafter there was default in payment.

In 1916, the plaintiff sued to recover the amount of twelve instalments that had accrued due.

The defendants pleaded that accounts should be taken under the provisions of the Dekkhan Agriculturists' Relief Act.

The accounts were accordingly taken by a Commissioner who found that Rs. 6,231-10-0 were due for principal, and allowed an equal amount for interest.

The trial Judge went into the accounts afresh, and allowed only Rs. 3,200 for principal and passed a decree for Rs. 6,400 for principal and interest.

The plaintiff appealed to the High Court.

*Jinnah*, with *H. B. Gumaste*, for the appellants.

*S. R. Bakhle*, for respondent No. 8.

MACLEOD, C. J. :—The plaintiff sued to recover Rs. 6,000 on a bond passed by the mortgagor-defendants on the 20th December 1892 for Rs. 15,000 whereby the suit property was mortgaged, the mortgage amount being payable by annual instalments of Rs. 500. The suit was to recover twelve instalments due under the bond commencing with 1904. As the mortgagor-defendants were agriculturists, an account was taken under the Dekkhan Agriculturists' Relief Act by the Commissioner who reported that Rs. 6,231-10-0 were due for

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principal and a larger amount for interest, and as the plaintiff would not be able to recover more than the amount of principal as interest, it followed that on the Commissioner's report an amount of Rs. 12,463-4-0 was due to the plaintiff. The Judge has dealt with the Commissioner's report in a somewhat cursory fashion, as he has only considered the various bonds entered into by the defendants from time to time and has come to the conclusion that only three of those bonds for Rs. 2,000, 400 and 800 were for cash consideration. How he came to that conclusion is not very clear, because from the Commissioner's report it will be seen that the plaintiff was able to produce his accounts from 1879 showing a very large number of small cash advances at short intervals until 1892, and it would also appear that the bonds taken by the plaintiff from time to time in no way corresponded with the account which he kept of the advances made to the defendants. So that there is no reason whatever for discarding entirely the accounts as drawn up by the Commissioner, and looking only to certain bonds as having been passed for cash consideration. Considering it does not appear that the advances made by the plaintiff correspond with the amounts of the various bonds passed by defendants, we would prefer to rely on the very careful account taken by the Commissioner; and we think that on the whole it is far more probable that on taking the accounts under the Dekkhan Agriculturists' Relief Act, over Rs. 12,000 were really due by the defendants as a result of the dealings between the parties. But under the bond itself apart from any question of taking accounts under the Dekkhan Agriculturists' Relief Act, only Rs. 9,500 remain due, and it would be a very curious result if a debtor owing to his seeking the relief afforded by the Dekkhan Agriculturists' Relief Act should have to pay more than he is obliged to pay

according to the terms of his bond. I cannot imagine that it was ever intended that the law should produce such an extraordinary result as that. I think the proper order to pass in this suit is that Rs. 9,500 are due by the mortgagor-defendants to the plaintiff. That amount we direct to be paid in two instalments, Rs. 4,750 to be paid on the 21st June 1922, and the second instalment of Rs. 4,750 to be paid on the 21st June 1923. In default the plaintiff should apply under section 15B of the Dekkhan Agriculturists' Relief Act.

The 8th respondent, who is a party to the suit as defendant No. 9, is a second incumbrancer, and the Judge has rightly directed that the property subsequently mortgaged to him should only be sold when it has been found that the sale-proceeds of the remaining properties encumbered in favour of the plaintiff are insufficient to meet the plaintiff's decree.

The costs of the appeal and of the suit to be added to the mortgage amount.

*Decree accordingly.*

R. R.

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PRIVY COUNCIL.\*

FORT PRESS COMPANY, LIMITED, DEFENDANTS v. MUNICIPAL CORPORATION OF THE CITY OF BOMBAY AND ANOTHER, PLAINTIFFS.

[On Appeal from the High Court at Bombay.]

*Land Acquisition Act (I of 1894)—Proceedings under Act—Competence of parties to agree value.*

Although proceedings have been taken for the compulsory acquisition of land under the Land Acquisition Act, 1894, the owner and the acquiring party remain competent to enter into an agreement as to the price, and an agreement so made is capable of being enforced in the ordinary way. An agreement

\*Present:—Lord Buckmaster, Lord Atkinson, Lord Sumner, Lord Carson and Sir John Edge.

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May 25.