APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice.

BAPU PIRAJI SHETE AND ANOTHER (ORIGINAL PLAINTIFFS), PETITIONERS
v. BHIKU NAGU THIKAN (ORIGINAL DEFENDANT), OPPONENT.*

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Dekkhan Agriculturists' Relief Act (XVII of 1879), ss. 15D, 3 (b) and 10—Suit for accounts under s. 15D—A decree for redemption passed on plaintiff's application—Whether appeal to the District Court competent.

The plaintiff filed a suit for accounts of a mortgage under s. 15D of the Dekkhan Agriculturists' Relief Act, 1879, in the Court of a Civil Judge, J. D., alleging that the transaction in suit, though ostensibly a sale, was really a mortgage. On the Court finding that the transaction was a mortgage, the plaintiff applied for redemption of the mortgage and a decree for redemption for Rs. 200 was passed. On the question whether an appeal to the District Court was competent against the decree:—

Held, that as soon as the plaintiff makes an application under s. 15D (*3*) of the Dekkhan Agriculturists' Relief Act, 1879, his original suit for accounts is converted into a suit for redemption and unless the suit falls under any of the sub-clauses of s. 3 (*b*) of the Act the decree passed in the suit is appealable and s. 10 of the Act does not apply to such a decree.

CIVIL REVISION APPLICATION against the decision of R. K. Ranade, Assistant Judge at Ahmednagar, reversing the decision of N. L. Ranade, Civil Judge, J. D. at Karjat.

The facts are set out in the judgment.

B. N. Gokhale, for the Petitioners.

K. V. Joshi, for the Opponent.

CHAGLA C. J. A very interesting point has been raised by Mr. Gokhale on this revision application. A suit was filed by the petitioners under s. 15D of the Dekkhan Agriculturists' Relief Act for accounts. The claim in suit was valued at Rs. 5 and it was instituted in the Court of the Civil Judge, Junior Division, Karjat. A certain transaction was challenged as a mortgage. The learned Judge held that the transaction was a mortgage and not a sale and found that there was nothing due at the foot of the mortgage on taking accounts. Then the petitioners made an application under sub-s. (*3*) of s. 15D for redemption of the mortgage. In that application the petitioners prayed that the suit for accounts be converted into a suit for

* Civil Revision Application No. 550 of 1951.

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redemption. They paid the necessary court-fees on a redemption suit and thereupon the learned Judge passed a redemption decree. From this decree an appeal was preferred to the District Court, Ahmednagar. The appeal was heard by the Assistant Judge. He allowed the appeal set aside the decree of the lower Court, and ordered that the plaintiffs' suit be dismissed. It is from that order that this revision application is preferred, and the contention urged by Mr. Gokhale is that no appeal lies from the decision of the trial Court, and even the revision that lies can only be heard by the District Judge, and all that the Assistant Judge can do is to refer the record with his remarks to the District Judge and the District Judge alone can pass the final orders on that application.

Section 3 provides that the provisions of Chapter II shall apply to (*a*) suits for an account, whatever be the amount or value of the subject-matter thereof, and s. 10 provides that no appeal shall lie from any decree or order passed in any suit to which Chapter II applies. The only right that an aggrieved party has is to go in revision to the District Judge under s. 53. A suit that is filed under s. 15D is undoubtedly a suit for accounts and it would fall under s. 3 (*a*), and any decree or order passed in such a suit will not be subject to appeal but can only be corrected in revision. The difficulty that arises in this matter is that although the suit was originally filed for accounts before a decree was passed in that suit under s. 15D (*3*), the plaintiffs applied to the Court to pass a decree for redemption of the mortgage and on that application a decree for redemption was passed, and the very short question that arises for my decision is, what is the effect in law of such an application being made by the plaintiffs under s. 15D (*3*). Mr. Gokhale's contention is that notwithstanding the application made by the plaintiffs under s. 15D (*3*) the nature of the suit is not changed, the suit continues to be a suit for accounts, and the redemption decree that is passed is a decree passed in a suit for accounts, and therefore, s. 10 applies to such a suit notwithstanding the fact that ultimately a redemption decree is passed. I am unable to accept that contention. When we turn to s. 3 (*b*), that section deals with suits of various descriptions, and one of them is a suit for redemption of mortgaged property when the plaintiff, or, where there are several plaintiffs, any one of the plaintiffs, is an agriculturist, and s. 3 (*b*) provides that when such a suit is heard by a Subordinate Judge of the First Class and the subject-matter thereof does not exceed in amount or value five

hundred rupees, or when such a suit is heard by a Subordinate Judge of the Second Class and the subject-matter thereof does not exceed in amount or value one hundred rupees, or when such a suit is heard by a Subordinate Judge of the Second Class and the subject-matter thereof exceeds one hundred rupees, but does not exceed five hundred rupees, in amount or value, and the parties to the suit agree that such provision shall apply thereto, then decrees in such suits are governed by s. 10 and no appeal lies. In other words, there is an appeal in every redemption suit where the value exceeds Rs. 500 if it is filed before the Senior Civil Judge, or if it exceeds Rs. 100 if it is filed before the Junior Civil Judge, or if it is filed before a Civil Judge, Junior Division, and exceeds in value Rs. 100 and there is no necessary agreement between the parties. Therefore, the Legislature clearly provided that whenever there was a redemption suit and the value was a particular value and it was filed in a particular Court, then a decree in such a redemption suit should be subject to appeal.

Now, it would indeed be a curious result if the plaintiff, instead of filing a redemption suit as he can, merely by applying under s. 15D (*3*), could deprive the defendant of his right to appeal, whatever may be the value of the subject-matter. In this very case the decree for redemption is for Rs. 200 and the suit was filed, as I have pointed out, before the Junior Civil Judge. If a redemption suit had been filed before the Junior Civil Judge, it is clear that as it does not fall under s. 3 (*b*), the decree would have been appealable. But according to Mr. Gokhale, because a redemption suit was not filed and a suit for accounts was filed and then on application a decree for redemption was passed, the decree is not appealable, but can only be corrected by revision. In my opinion, it is clear that under s. 15D (*3*) an option is given to the plaintiff to make an application for a decree for redemption. Instead of making such an application he may content himself with a decree in a suit for accounts and at a later stage file an independent suit for redemption. But whether he files an independent suit for redemption or makes an application under s. 15D (*3*), in my opinion the result is the same. In substance, as soon as he makes an application under s. 15D (*3*), his original suit for accounts is converted into a suit for redemption. It is as if he had amended the plaint praying for redemption. Instead of amending the plaint he is permitted by law to make an application

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to the Court to pass a decree for redemption. There is no difference whatsoever in the nature of the suit after the application is made under s. 15D (3) and a separate suit that the plaintiff might file for redemption. Therefore, once an application is made under s. 15D (3), unless the suit falls under any of the sub-clauses of s. 3 (b), the decree passed in such a suit is appealable and s. 10 does not apply to such a decree. Therefore, in my opinion, the learned Assistant Judge was right in entertaining an appeal against the decision of the trial Court. In this view it is unnecessary to decide whether the Assistant Judge was competent to decide a revisional application, assuming that a revision lay to him and not an appeal.

On merits there is no substance in the application. The trial Court held that the transaction was a mortgage. The District Court, applying the well known tests, has come to the contrary conclusion and no question of jurisdiction can arise in respect of the decision come to by the learned Assistant Judge.

The result is that the application fails. Rule discharged with costs.

Rule discharged

K. B. S.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice.

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LINGANGOUDA MARIGOUDA PATIL (ORIGINAL DEFENDANT NO. 1), (PETITIONER *v.* LINGANGOUDA FAKIRGOUDA PATIL AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANT NO. 2), OPPONENTS.*

Indian Limitation Act (IX of 1908) arts. 62, 120—Money paid by plaintiff and defendant in equal shares as money due by both—Entire amount refunded to defendant alone—Amount not received by defendant for use of plaintiff—Plaintiff's claim to share of money received by defendant—Nature of the claim, whether equitable or contractual—Applicability of Art. 62—Construction.

The plaintiff paid a moiety of assessment which he was liable to pay to the Sangli State and the defendant paid the other moiety. In 1938 the State refunded the whole amount to the defendant alone. In 1943 the

* Civil Revision Application No. 578 of 1951.