

---

**(1948) 02 BOM CK 0008**

**In the Bombay High Court**

**Case No :** Civil Revision Application No. 432 of 1947

Bharmagowda Bhimagowda Patil

APPELLANT

Vs

Irappa Satyappa Dhanagar

RESPONDENT

---

**Date of Decision :** 27-02-1948

**Acts Referred:**

Bombay Agricultural Debtors Relief Act, 1947 — Section 17

**Citation :** AIR 1949 Bom 108 : (1948) 50 BOMLR 708

**Hon'ble Judges :** Jahagirdar, J

**Bench :** Single Bench

---

## Judgement

Jahagirdar, J.—This is a revision application filed by the applicants who are described as creditors, against the finding given by the Court established under the Bombay Agricultural Debtors Relief Act that the sale of 1909 passed by the predecessor-in-title of the debtors was not binding upon the reversioners, i.e. the debtors. The facts leading to this application are these.

2. One Irappa was the owner of the two survey Nos. 43 and 44. He had two sons, Satyappa and Mallappa. Mallappa died leaving a widow Shiddava. Shiddava on August 19, 1895, mortgaged to the predecessor-in-interest of the applicants before me her share in these two survey numbers for Rs. 150. On July 29, 1909, she sold her equity of redemption to the applicants' predecessor-in-title. Shiddava died about the year 1934. On August 3, 1944, the present opponents as the reversionery heirs of Shiddava filed Suit No. 208 of 1944 in the Court of the Civil Judge, Junior Division, at Hukeri, for redemption of the mortgage of 1895. In that plaint they did not even refer to the sale-deed passed by Shiddava in favour of the predecessor-in-interest of the present applicants. The defendants who are the applicants here, contended in the suit that Shiddava had already sold her equity of redemption to them and that the mortgage was not subsisting and that, therefore, the suit under the Dekkhan Agriculturists' Relief Act could not lie. But after the Debt Adjustment Board was established in that taluka, at the instance of debtors, i.e., the opponents, the suit was transferred to the Board

on January 12, 1946. On May 27, 1947, the Bombay Agricultural Debtors Relief Act of 1947 came into force. So, that matter was transferred back to the Court from the Debt Adjustment Board. At the instance of the opponents-debtors a preliminary issue No. 3, was raised, viz., whether the sale by Shiddava dated July 29, 1909, was for legal necessity and binding on the reversioners. The applicants, who are described as the creditors, contended that as Shiddava had already sold her equity of redemption, the Bombay Agricultural Debtors Relief Act would not govern this case and the Court established under the Bombay Agricultural Debtors Relief Act had no jurisdiction to decide that issue. The Court, however, held that it had jurisdiction to decide that issue, and has recorded a finding that the sale by Shiddava not being for legal necessity was not binding upon the reversioners who are the debtors in this case. As against this finding the applicants have come in revision to this Court.

3. Mr. Kalagate, the learned advocate for the debtors, raises a preliminary objection that an appeal against the order passed u/s 17 lies to the District Court and, therefore, a revision application to the High Court against an order passed u/s 17 is not competent. Section 17 provides:

On the date fixed for the hearing of an application made u/s 4, the Court shall decide the following points as preliminary issues:

- (a) whether the person for the adjustment of whose debts the application has been made is a debtor;
- (b) whether the total amount of debts due from such person on the date of the application exceeds Rs. 15,000.

Now, these two preliminary issues had been raised in the present case and it is the contention of Mr. Kalagate that unless the Court decided that the sale of 1909 was not binding upon the reversioners, it was not open to the Court to record a finding on these preliminary issues and, therefore, as a necessary prerequisite condition for recording a finding on those two preliminary issues, the Court had to decide this third preliminary issue, as to whether the sale was binding upon the reversioners. Therefore, it must be construed that issue No. 3 would also fall within the purview of Section 17. It is, however, contended by Mr. Manerikar, the learned advocate for the creditors, that it is not within the scope of authority of the Court established under the Bombay Agricultural Debtors Relief Act to decide as to whether a particular sale is binding on the debtors or not, because according to him the scope of the Act is as follows. First of all, an application has got to be made u/s 4 either by the debtor or by the creditor for adjustment of the debts. Now, this duty presupposes that the suit or the dispute must be about the existing debts. If, on the face of it, it is clear that the dispute is about the existing debts, Section 17 will immediately come into play, and the Court has got to decide the preliminary issue as to whether the person is a debtor and whether his debts do not exceed Rs. 15,000. But if on the face of the contentions it is not clear as to whether there was any debt, then Section 24 provides that in the

course of the hearing of an application made u/s 4 if any contention is raised that a particular transaction which appears to be a sale was a mortgage, it is open to the Court to hold that it was a mortgage before it decides u/s 17 about the existence and the extent of the debt. But no such power is conferred on the Court to decide whether a particular alienation is binding on the debtors if in the course of an inquiry u/s 4 where, on the pleadings, it is not clear as to whether there was any debt, there is a contention that a particular alienation is not binding on the debtors. The determination of this issue is outside the scope of the Bombay Agricultural Debtors Relief Act.

4. I think this contention is well founded. Even under the Dekkhan Agriculturists' Relief Act such a suit is not competent. Originally the Suit No. 208 of 1944 was filed in the Hukeri Court for redemption under the Dekkhan Agriculturists' Relief Act or in the alternative under the Transfer of Property Act. There are rulings to show that if in answer to such a suit, the defendant showed that the mortgage is not in existence and the right of redemption has also been sold, then such a suit would not be competent under the Dekkhan Agriculturists' Relief Act. In Chandikaprasad Deviprasad Agnihotri Vs. Shivappa Shiddappa Davalanavar, it has been held that where a sale deed is passed by the defendant as a manager of the Hindu joint family of which the plaintiffs were members, it could not be absolutely ignored by the plaintiffs and it was not competent to them to resort to the special provisions of the Dekkhan Agriculturists' Relief Act. There are other cases also on this point, viz. Krishnaji v. Sadanand (1942) 26 Bom. L.R. 341 and Shidlingava v. Rajava (1930) 33 Bom. L.R. 603 wherein it has been laid down that a suit could not lie u/s 15B of the Dekkhan Agriculturists' Relief Act since it involves an issue whether or not the mortgage was in existence. It, therefore, appears clear to me that such suits were not even competent under the Dekkhan Agriculturists' Relief Act, and in the absence of any express provision conferring the power to decide such issues upon the Court established under the Bombay Agricultural Debtors Relief Act, I must hold that the Court acting under the Bombay Agricultural Debtors Relief Act cannot decide the point as to whether a particular sale is binding upon the debtors or not. If that is so, then the Court had no jurisdiction to frame such an issue and record a finding on it, and it is also clear that unless this issue was found upon in favour of the debtors, the preliminary issues u/s 17 could not be found upon. Therefore, it is no use merely setting aside the finding recorded by the trial Court. I must follow it up by a direction that the proceedings be transferred from the Court established under the Bombay Agricultural Debtors Relief Act to the regular Court for disposal on merits.

5. The rule is made absolute and the opponents should pay the costs of the applicants.