

**(1941) 11 BOM CK 0003**

**In the Bombay High Court**

**Case No :** Civil Revision Application No. 94 of 1941

Ghunilal Kevalram Marwadi

APPELLANT

Vs

Ramqhandra Yesaji Gursal

RESPONDENT

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**Date of Decision :** 19-11-1941

**Acts Referred:**

Dekkhan Agriculturists Relief Act, 1879 — Section 10

**Citation :** (1942) 44 BOMLR 278

**Hon'ble Judges :** N.J. Wadia, J; John Beaumont, J

**Bench :** Division Bench

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## **Judgement**

John Beaumont, C.J.—This is an application in revision against an order made by the District Judge of Ahmednagar holding that an appeal to his Court did not lie. The question turns on the effect of Section 10 of the Dekkhan Agriculturists' Relief Act. The plaintiff in his plaint claims a declaration that the suit sale-deed is in the nature of a mortgage and that accounts should be taken on that basis. The learned trial Judge declared that the transaction evidenced by the sale-deed in suit was only a mortgage and found the amount due to the defendant from the plaintiffs on the basis of the mortgage. Section 10 of the Dekkhan Agriculturists' Relief Act provides that no appeal shall lie from any decree or order passed in any suit to which Chapter II applies, so that if the suit comes under Chapter II, no appeal lies. In my view the suit comes u/s 3(a) which is contained in Chapter II and provides that the provisions of this Chapter shall apply to suits for an account instituted by an agriculturist in the Court of a Subordinate Judge under the provisions thereafter contained. Under the provisions thereafter contained, namely, u/s 10A, it is open to an agriculturist to prove that a document which is in terms a sale-deed is in fact a mortgage, and the Court can determine that question and grant relief accordingly. Mr. Chitale argues that this is in substance a suit for a declaration that what purports to be a sale-deed is in fact a mortgage, and that the decision of the learned Judge really deprives him of his title under the sale-deed. I have no doubt that in applying Section 10 we must be satisfied that in substance the suit falls within Chapter II, and the fact

that relief of a subsidiary nature which falls within that Chapter is sought would not make the suit one to which -the chapter applies within the meaning of Section 10. If it be necessary for the plaintiff to obtain some substantive relief before he can get the account which brings the case within-the chapter, then I think, Section 10 would not apply. That was the case in Chmdabhai v. Ganpati (1916) 18 Bom. L.R. 763 where the plaintiff was suing for redemption, but before he could get an order for redemption he had to get a sale of part of the equity of redemption set aside. But in this case, though no doubt the plaintiff has asked for a declaration,, he was not bound to do so. The only relief which he really wants is an account of the amount due to him on the mortgage. In a suit of that nature the plaintiff must always prove the mortgage, and owing to the special provisions of Section 10A he can prove that a document which is on its face a sale-deed is in fact a mortgage. But that is the only part of the evidence required to establish his title as mortgagor on which his claim is based. It seems to me impossible to say that the order in this case was not passed in a suit to which Chapter II applied. In my view the suit related solely to relief: covered by Section 3(a) of the Act which is included in Chapter II. I think therefore the learned Judge was right in holding that no appeal lay. The rule is discharged.

N.J. Wadia, J.—I agree.