(1920) 06 BOM CK 0003

In the Bombay High Court

Case No : Second Appeal No''s. 107 and 1021 of 1916

Gurunath Keshav Kalkundri and Balakam Gopal Kalkundri APPELLANT

Vs

Sadashiv Balkrishna Deshpande RESPONDENT

Date of Decision : 15-06-1920

Acts Referred:
Dekkhan Agriculturists Relief Act, 1879 — Section 13

Citation : AIR 1921 Bom 251 : (1920) 22 BOMLR 1190

Hon'ble Judges : Norman Macleod, J;Fawcett, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, Kt., C.J.—In this case there was a mortgage in 1885 for Rs. 3,000. It was stated in the mortgage deed that the mortgagee should be in possession and receive the profits in lieu of interest on Rs. 2700 out of Rs. 3,000 leaving the balance of Us. 300 to carry interest. In 1891 a fresh advance of Rs. 700 was made on a bond at 15 per cent, per annum interest. In the same way in 189.5 another advance of Rs. 200 was obtained on a third bond. The learned Judge in the trial Court took an account under the provisions of the Dekkhan Agriculturists'' Relief Act and found that nothing was due. He found as a fact that when the second advance of Rs. 700 was made the previous loan had not been paid only, and so again when the third advance of Rs. 200 was made in 1895, the transaction was still open between the parties. Therefore he took an account under the provisions of s 11 on the footing that there was a series of transactions between the parties, which together amounted to one set of dealings of which an account should be taken.

2. In appeal this decision was confirmed with a slight variation which did not affect the result, as the learned appellate Judge found that the mortgage had been paid oft''.

3. In second appeal it is urged that the accounts have been taken according to a

wrong method. We have been referred to the case of Vishnu Keshav Joshi v. Satvaji valad Tulsaji Navale (1897) P.J. 87. But in that case it was expressly found that before the second transaction was entered into, the first transaction had been completed. The money had been paid back. Therefore there was not a series of transaction which could be connected together. The second transaction followed after the first when the first transaction had come to an end. That makes all the difference in our opinion. In this case the series of transactions between the parties was exactly the kind of series of transactions contemplated by Section 13 of the Act, and it was intended that an account should be taken of the whole series of transactions between the parties as if they were one entire transaction. Therefore we confirm the decree and dismiss the appeals with costs.

