

(1925) 11 BOM CK 0005
In the Bombay High Court
Case No : Second Appeal No. 463 of 1924

Sidheshvar Martand Hagre

APPELLANT

Vs

Ganpatrao Baburao Patil

RESPONDENT

Date of Decision : 11-11-1925

Acts Referred:

Citation : (1926) 28 BOMLR 588 : (1926) ILR (Bom) 331

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

Bench : Division Bench

Judgement

Norman Macleod Kt., C.J.—This was a redemption suit filed by the plaintiffs, and after a somewhat varied career the suit was decided by the Subordinate Judge who directed the plaintiffs to recover possession of the property in suit, except Prat. No. 86, Survey No. 79, without paying anything to defendant No. 1. That one land referred to was omitted from the order because in execution of a money decree against the mortgagors, their equity of redemption in that property was sold.

2. The appellate Judge allowed the plaintiffs to get possession of that Survey Number as well, following the decision in Martand Dhondo I.L.R.(1897) 22 Bom. 624 : S.C. 7 Bom. L.R. I.P.C.

3. Defendant No. 1 has appealed, and the respondent's pleader rightly admitted that the decision in Khiarajmal v. Daim ILR (1904) Cal. 296 governs the case, and the case of Martand v. Dhoudo cannot now be considered as an authority, as was pointed out in Govindmo v. Waman S.A. No. 474 of 1909 in this Court.

4. The appellant, however, contended that the plaintiffs were not entitled to redeem more than their share of the mortgaged property, because there were other mortgagors who could not join in a redemption suit owing to the bar of limitation.

5. Now the ordinary principle is that one tenant-in-common as mortgagor can

redeem the whole property. No reason has been shown in this case why the ordinary rule should not be followed beyond this, that the mortgagee had become entitled by purchase of the equity of redemption in one property mortgaged. There has been no severance of the equity of redemption according to the shares of the mortgagors, which could possibly justify the Court in holding that the plaintiffs had lost their right to redeem

6. In that respect the appeal fails. But the appeal will be allowed to this extent that the plaintiffs cannot get possession of Prat. No. 86, Survey No. 79. No order as to costs.