
(1923) 08 BOM CK 0006
In the Bombay High Court
Case No : Appeal from Order No. 67 of 1922

Suklya Jairam Patil

APPELLANT

Vs

Suklal Motichand Vani

RESPONDENT

Date of Decision : 28-08-1923

Acts Referred:

Dekkhan Agriculturists Relief Act, 1879 — Section 15B

Citation : AIR 1924 Bom 169 : (1923) 25 BOMLR 1214

Hon'ble Judges : Lallubhai Shah, J;Crump, J

Bench : Division Bench

Judgement

Crump, J.—The point for our decision in the present case is substantially this, whether a decree made under the provisions of Section 15B of the Dekkhan Agriculturists' Relief Act is a decree-nisi requiring to be made final. The matter arises in this way. In 1897, the father of the first defendant and another mortgaged certain property for Rs. 125 to the plaintiff, In 1910, the plaintiff sued to recover Rs. 250 upon this mortgage. On March 27, 1911, a decree was passed in plaintiff's favour in the following terms:—

Defendants to pay Rs. 182 and cost to plaintiff within six months from this (Sic), and in default plaintiff to apply to the Court for an order for sale of defendant's interest in the mortgaged property u/s 15B of the Dekkhan Agriculturists' Relief Act.

2. The time allowed for payment expired on September 27, 1911, and from that date onwards at intervals of three years various applications were made by the plaintiff to the Court for the purpose of the execution of the decree.

3. It is unnecessary to go into the details of those applications. It is sufficient to say that the view was taken that as the decree had not been made final, no order for execution could be made. Finally, on April 22, 1920, the plaintiff applied specifically to make the decree final, and was met by a plea of limitation. The Judge of the lower appellate Court holding that no application was necessary to

make the decree final, treated this application as an application u/s 15B, and regarding the previous applications as steps-in-aid of execution, held that the Darkhast was in time; and should be proceeded with according to law.

4. The question is whether that is the correct view. Some distinction has been suggested between a decree under a 15 B which provides for payment by instalments and a decree such as is made in the present case. But it appears to me impossible to hold that Clause (1) of Section 15B is confined to decrees in which the amount is payable by instalments. Rather I should hold that it applies to all decrees for redemption, foreclosure or sale in any of the suits specified in that section, and it follows that nothing turns upon any distinction of that nature. It is clear that the decree in this case purported to be made u/s 15 B, and its terms are strictly in accordance with that section.

5. Now the general question as to whether the provisions of the CPC requiring that there should be in the first instance a decree nisi, then an application to make that decree final, can be held to apply to decrees u/s 15B of the Dekkhan Agriculturists' Relief Act, was discussed by this Court in *Kushinath Vinayak v Rama Daji* ILR (1916) 40 Bom. 492: 18 Bom. L.R. 475. The view there expressed, if I may say so with all respect, is the view which I have always held as to the correct scope of those sections of the Dekkhan Agriculturists' Relief Act, including Section 15B, which deal with the subject of mortgage decrees, and that being so, I have no hesitation whatever in following that decision. It is true that some doubt has been cast upon the correctness of the law as there stated by the decision in *Ramji v. Pandharinath* ILR (1918) 43 Bom. 334 : 21 Bom. L.R. 56 But speaking for myself, I am none the less of opinion that the decision in *Kashinath Vinayak v. Rama Daji* ILR (1916) 40 Bom. 492 : 18 Bom. L.R. 475 is correct in point of law, and ought to be followed by us in the present case. I am fortified in that conclusion by the judgment of the learned Chief Justice in *Hirachand v. Aba Lala* (1921) 24 Bom. L.R. 269 of the Report is the following passage :?"Now, when a decree is passed under the provisions of the Dekkhan Agriculturists' Relief Act, there is no necessity to apply to the Court to have the decree made absolute," That is a general statement applicable to all decrees under the provisions of the special legislation, and as I have already said, there is no doubt that we have such a decree before us here.

6. Upon these grounds, therefore, I am clearly of opinion that there was no necessity in the present case to move the Court to make the decree final, and that an application could have been made for sale of such portion of the mortgaged property as was necessary to pay the decretal amount. That being so, it follows, as held by the Judge of the lower appellate Court, that the previous applications being regarded as steps-in-aid of execution, the present application can be held to be an application to execute the decree, and as such must be taken to be in time.

7. On these grounds, I would confirm the order of the lower appellate Court and dismiss the appeal with costs.

Lallubhai Shah, Kt., Ag. C.J.

8. I concur. I only desire to add that I am conscious of the weight to be attached to the observations in *Ramji v. Pandharinath* ILR (1918) 43 Bom. 334: 21 Bom. L.R. 56 But the observations in *Hirachand v. Aba Lala* (1921) 24 Bom. L.R. 269 support the view taken in *Kashinath Vinayak v. Rama Daji* ILR (1916) 40 Bom. 492 : 18 Bom. L.R. 475, and my learned brother is distinctly of opinion that the view taken in *Kashinath v. Rama* is correct. Under the circumstances I do not see any need to refer this matter to a Full Bench.