

**(1916) 08 BOM CK 0012**  
**In the Bombay High Court**  
**Case No : First Appeal No. 192 of 1913**

Vinayakrao Balasaheb Inamdar

APPELLANT

Vs

Shamrao Vithal Kalkundri

RESPONDENT

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**Date of Decision :** 17-08-1916

**Acts Referred:**

Dekkhan Agriculturists Relief Act, 1879 — Section 3

**Citation :** (1916) 18 BOMLR 708 : 36 Ind. Cas. 72

**Hon'ble Judges :** Stanley Batchelor, J;Shah, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Stanley Batchelor, Kt., Acting C.J.

1. The appellants, who were the plaintiffs in the lower Court, brought this suit as a suit for redemption under the Dakkhan Agriculturists' Relief Act. The mortgage to be redeemed was said to be that executed by the plaintiffs' father in 1894. In 1899?the mortgagee sued the mortgagor for recovery of the mortgage debt and for sale of the property. In March, 1900, there was a consent decree by which a new sum was taken as the capitalized principal, interest was allowed at 7 per cent., and provision was made for payment of the money by certain instalments. The security under this arrangement differed in some particulars from the security of the earlier mortgage, and notably Survey No. 50, which was included in the older mortgage, was excluded from the purview of the consent decree, On the same day as this consent decree was obtained, Survey No. 50 was sold by the mortgagor to the mortgagee for Rs. 1,000. In 1903, the mortgagee, on his application for execution of the consent decree, obtained possession of the property and has since remained in possession. Therefore, in 1911, the plaintiffs brought the present suit. In their plaint they set out the facts which I have summarised, and they claim to set aside the consent-decree as having been obtained by fraud, coercion and misrepresentation. In the same way they seek to set aside the sale-deed of Survey No. 50 on the ground that it was nominal and

fraudulent and procured by coercion.

2. Mr. Coyaji contends, and I think rightly, that such a suit is outside the Dekkhan Agriculturists' Relief Act. If reference be made to Sections 3, 12 and 13 of that Act, it will be seen that the suit can only be brought within the statute if it is a suit for the redemption of mortgaged property within the meaning of clause 3 of Section 3. It is, in my opinion, clearly not within this clause, the words of which contemplate a mortgage suit either simpliciter or primarily and substantially. This, however, is something far more than that, and very different from that. It is a suit to set aside a sale-deed and a Court's decree, and, when those things are done, to recover the property of which, according to the plaint, the plaintiffs have been fraudulently deprived. This seems to me to be the description of the suit, and, if that is so, it falls, I think, within the authority of the Privy Council decision in *Mt. Bachi v. Bickchand* (1910) 13 Bom. L.R. 56 where Lord Macnaghten said, in language which appears to me perfectly applicable to the present suit: "In form it is a suit for redemption, In reality it is nothing of the kind. It is a suit to recover property of which the rightful owner has been deprived by fraud. That settles the case." In the case before their Lordships of the Judicial Committee the obstacles which stood in the way of the immediate redemption were certain private sales made by the mortgagors to the mortgagees. Here also the obstacle is in part the same. For in part it consists of the private sale of Survey No. 50 made by the mortgagor to the mortgagee in 1900. For the rest the impediment consists of the decree of a Court, which is not the less a decree because it was obtained by consent of parties. I may add that on similar facts this Court took the view which I am now expressing in *Shamrao Vithal Kalkundri v. Nilkanth Ramchandra Kulkarni* ((2) In First Appeal No. 15 of 1912, which was heard by Scott C. J. and Chandavarkar J. on the 26th August 1912, the following judgment was delivered:-

Scott, C.J.

3. It appears to us that the award decree of 1884 superseded the original mortgage and the rights of the mortgagee must now be determined by the terms of that decree, which was passed in his favour. We do not think that a suit to obtain redemption on the footing of the original mortgage will lie, nor do we think that the decree passed upon the award in 1884 was a decree in a suit tinder Section 8 (z) of the Dekkhan Agriculturists' Relief Act, within the meaning of Section 15 B of that Act.

4. It is, therefore, difficult to see how this suit can be supported and how the decree which has been passed in the lower Court can be upheld.

5. Mr. Kelkar on behalf of the respondent has, we think, said every thing that can be said on behalf of his client. But the appellant's counsel has made an offer which enables us to put the respondent in a very good position having regard to the rights of the mortgagee under the award decree, for, the mortgagee, by his counsel, consents to take payment of the remaining sum of Rs. 8,000, which is

due for principal by instalments of Rs. 500, annually with future interest at 9 per cent, till payment from date of suit, the first instalment to be payable on Ist January 1913.). On these grounds it appears to me that the suit as brought is not maintainable. That being so, we express no opinion as to the merits of the case on any other point of controversy between the parties. The appeal must be dismissed with costs, the lower Court's decree being affirmed. Respondent No. I alone will have the costs.

Shah, J.

6. I agree