

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

GANESH SHIVRA'M, PLAINTIFF, *v.* ABDULLA'BEG, DEFENDANT.*

1884
June 19.

Civil Procedure Code—Act XIV of 1882, Sec. 257A—Construction—Bond for satisfaction of judgment debt without sanction of Court.

G., the father of the plaintiff, obtained two decrees : one against the defendant A. and his father, and the other against A.'s father alone, and in satisfaction of these decrees obtained a bond without the sanction of the Court, and brought a suit to recover the sum due under the said bond,

Held that the bond was void under the second clause of section 257A of the Civil Procedure Code (Act XIV of 1882).

THIS was a reference from Khán Báhádur E. M. Modi, First Class Subordinate Judge of Ahmednagar, under section 617 of the Civil Procedure Code.

The plaintiff sought to recover the sum of Rs. 325 as principal, plus Rs. 75 as interest, due under a bond dated 5th September, 1879. The bond was passed in consideration of Rs. 124-9-10 and Rs. 200-6-2 (=Rs. 325) respectively due under two decrees, one obtained by plaintiff's father against defendant and his father, and the other obtained by plaintiff's father against the defendant's father. There was in the bond a condition to the effect that the said sum of Rs. 325, with interest at 12 annas per cent. per mensem, was to be repaid at the end of one year ; and that, in default, the defendant was to continue to pay interest at the same rate until satisfaction of the debt. It was admitted that the sanction of the Court was not obtained for the execution of the bond.

The points referred for decision were :—

1. Whether the agreement to give time was void under para. 1 of section 257A ? and
2. Whether the agreement to give interest was void under para. 2 of section 257A ?

The opinion of the First Class Subordinate Judge of Ahmednagar on both points was in the negative.

* Civil Reference, No. 20 of 1884.

There was no appearance for the parties.

Per Curiam.—The Court thinks the agreement is void under the second clause of section 257 A of the Code of Civil Procedure (XIV of 1882). See the case of *Madhavráo Anant v. Chilu bin Tukárám*⁽¹⁾.

(1) Printed Judgments for 1881, p. 315.

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GANESH
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APPELLATE CIVIL.

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NÁRÁYAN NAGARKAR (ORIGINAL PLAINTIFF), APPELLANT, v. VITHU
JÁKHOJI AND TWO OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

June 24.

Civil Procedure Code Act XIV of 1882, Sec. 265—Suit in ejectment—Partition by Collector—Jurisdiction—Mortgage sale—Hindu law—Undivided property—Possession.

V. mortgaged to the plaintiff his house and certain undivided land in which H. and others, Hindu co-parceners, had a share. R. bought the interest of H. in the land at a Court sale, and let to H. and V., who, failing to pay rent, were sued by R., who got a decree for possession. This decree was transferred for execution to the Collector, who sold the land and rateably distributed the proceeds, except to V., who declined to take the amount tendered as his share.

The plaintiff sued V., and the purchasers under R.'s decree to recover his mortgage debt by a sale of the property mortgaged to him.

• Held that R.'s decree not being for partition of the family property, or for the separate possession of a share, was not one contemplated by section 265 of the Code of Civil Procedure. The proceedings of the Collector were without jurisdiction, and the plaintiff was entitled to ignore them, and assert his claim under the mortgage.

That the defendants being in actual possession—albeit through a sale under a void decree—could not be ousted in the present suit, and were entitled to say that the plaintiff had not proved his title to sell the specific lands mortgaged.

THIS was a second appeal against the decision of M. H. Scott, Judge of the District Court of Ahmednagar, confirming the decree of Ráv Sáheb Dinánáth A. Dalvi, Joint Subordinate Judge.

* Second Appeal, No. 72 of 1883.