

to extend and complete such rights in a way which would make the defendants the victims, not of their own negligence, but of the negligence of those who would gain by it.

As to the doctrine of *Sobhagchand Gulábechand v. Bhaichand* ⁽¹⁾ that a judgment-debtor's interest is sold subject to all existing equities against him, it is plain that in the present case the equitable right of the plaintiffs at the time of the sale to the appellants, however good as against Maribasapa, had not yet become a right in *re*, an ownership good against every one even as to the remnant of ownership (including possession) left to the mortgagor. When the appellants then purchased without notice of the plaintiffs' equitable right, they acquired a right at least as good; and fortified by possession, this title became a complete one—*Shivrám Náráyan Mekal v. Rájvi Sakhárám Pradhan* ⁽²⁾—as against a mere equity available against Maribasapa, but not, except through notice, against those who took his estate by purchase without his consciousness of latent obligations or inchoate rights derogating from his ownership, or rather capable of being asserted against it in the way prescribed by law.

We must, for these reasons, reverse the decrees of the Courts below and reject the plaintiffs' claim with costs throughout.

Decrees reversed.

(1) I. L. R., 6 Bom., 193.

(2) I. L. R., 7 Bom., 254.

APPELLATE CIVIL.

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

VA'SUDEV B. PANDIT, PLAINTIFF, *v.* NA'RA'YAN V. JOSHI,
DEFENDANT.*

August 23.

*Dekkhan Agriculturists' Relief Act, XVII of 1879, Secs. 13, 41, 43, 44 and 46—
Amicable settlement—Finally disposing of the matter—Instalment—Interest.*

The expression "finally disposing of the matter" in sections 43 and 44 of Act XVII of 1879 means no more than the expression "amicable settlement" in sections 41 and 46.

* Civil Reference, No. 32 of 1884.

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An agreement for the settlement of a plaintiff's claim to be paid a mortgage debt at once or to have the property sold, by an arrangement for the payment of the debt by instalments with power to the plaintiff in default of payment of any instalment to take or retain possession until the debt has been satisfied out of the produce of the estate is an "amicable settlement," and therefore one "finally disposing of the matter" which if duly presented, must be filed by the Court.

Where the sum due upon such an agreement is partly made up of interest, a provision to pay interest on any instalment remaining unpaid does not make the agreement illegal.

THIS was a reference under the provisions of section 54 of Act XVII of 1879 by A. D. Pollen, Special Judge, upon a report made to him by the Subordinate Judge of Wái. The report was as follows:—

"I beg to submit herewith for orders a *kabuláyat* No. 369 of 1883 made before Conciliator Mr. Rámkrishna Mádhavráo Vaidya under section 41 of Act XVII of 1879 between Vásudev Báburáv Pandit of Wái and Náráyan Vyanktesh Joshi of Bhuinj. The facts of the case are as follows:—

"The applicant Pandit's claim on three mortgage bonds was to recover principal Rs. 289 and interest Rs. 289, in all Rs. 578, from the respondent Joshi and by the sale of the mortgaged house and lands. The parties agree that the respondent should pay to the applicant Rs. 578 in ten yearly instalments, (2) that in default of punctual payment of the due instalment, the respondent should pay to the applicant, interest on the amount of the instalment at 12 annas per cent. per mensem from the due date of payment, (3) that in default of payment of the first or any instalment within four months from the due date, the applicant should take possession of the mortgaged property with the crops thereon, should let the lands at a rent in kind, should appropriate the rent, after payment of the assessment and expenses of manure, seed, &c., towards the satisfaction of the due instalment and should pay over to the respondent, after taking his receipt, the surplus, if any, over the amount of the instalment, (4) that if the debt should not be fully discharged within the ten years from the profits of the property, the applicant should continue on the aforesaid terms to manage the property and to appropriate the profits towards the satisfaction of the principal

and interest until satisfaction, and should restore possession to the respondent after complete satisfaction, (5) that if in default of punctual payment of any instalment, the applicant should take possession of the mortgaged property, the applicant should receive in advance Rs. 5 on account of house-rent every year from the respondent, should also take a written rent-note from the respondent, and then should give the house out of the mortgaged property to the respondent for residing therein and should go on crediting the Rs. 5 towards the satisfaction of the instalment, (6) that if the applicant should not be able to obtain possession of the mortgaged property owing to any proper and lawful obstruction, he should recover instalment from the respondent personally, (7) that if the applicant should obtain possession of the mortgaged property through the Court, and if the respondent should thereupon cause *kabuláyats* to be passed by tenants, solvents according to the applicant's notions, the applicant should let the lands to such tenants, and (8) that the respondent should pay to the applicant the costs of this agreement and the costs, if any, to be incurred in execution.

"The *kabuláyat* which is dated 25th September, 1883, was received in the Wái Court on the 5th October, 1883. On the careful scrutiny ordered to be made by Government Resolution in the Judicial Department, No. 2730, dated 30th April, 1881, I found on the face of it that the document did not constitute an agreement within the meaning of section 43 for the following reasons:—

"(a) The document is not a legal agreement because it stipulates contrary to the provisions of section 13, that the agriculturist-debtor shall pay interest on the instalments, into which the aggregate sum, made up of equal amounts of principal and interest, is divided, that is to say, the document contains a stipulation for the payment of compound interest. (b) The document to become an agreement under sections 43 and 44, must *finally dispose of* the matter in dispute and should be capable of execution as a decree after it is filed. According to my notion of a final disposal in such matters, a disposal should be considered a final disposal, when it does not require a judicial ad-

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judication at any further stage and can be carried out minimally. The disposal in the present case is not final. The question of net profits is about the hardest to be settled in cases in which the mortgagee takes possession. That question is here left quite undisposed of. If this document is filed, every year the debtor will present a *darkhást* for recovering the surplus. To arrive at the amount of the surplus, if any, it will be necessary to make an exhaustive enquiry. I can't clearly see how the stipulations above the letting of the house, and the letting of the lands can be carried out in execution.

“Thinking, therefore, that the *kaḅuláyat*, if not amended, will have to be sent back to the Conciliator under the rule made by Government (Government Resolution in the Judicial Department, No. 2730, dated 30th April, 1881), I sent it back on the 25th October, 1883, calling on the parties, through the Conciliator, to amend their *kaḅuláyat* according to my suggestion. It was received back on the 22nd April last with the Conciliator's answer dated 10th February, 1884. The Conciliator informs me that the parties are unwilling to amend the *kaḅuláyat*.

“It is true that I have the power to deal with the *kaḅuláyat* to the best of my judgment; but as *kaḅuláyats* with more or less of similar objectionable stipulations are often received, and as on each of such occasion there is nothing to guide me but my guideless discretion, I have thought it proper on this occasion to solicit the favour of your opinion as to the proper course to be adopted in such cases. The *kaḅuláyat* with the accompaniments accompanies this report.”

Upon the above report of the Subordinate Judge the Special Judge made the following remarks in submitting the report:—

“Under the provisions of section 54 of Act XVII of 1879 I have the honour to submit for the orders of the High Court the accompanying report from the Subordinate Judge of Wái in the Sátára District.

“2. The questions for decision are—(1) whether the conciliation agreement, the subject of his reference, is a legal agreement finally disposing of the matter in dispute between the parties,

within the meaning of section 44 of the above Act and whether the Court is bound to file it under the said section; and (2) if the Court may refuse to file it, what procedure should be adopted and what are the legal consequences of such refusal.

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“3. My opinion is (1) that the agreement is in itself a legal one, but that it is not one which finally disposes of the matter in dispute between the parties, and therefore the Court should refuse to file it; and (2) that the Court should remit the agreement to the Conciliator, who should then issue a certificate under section 46, unless the parties consent to amend the agreement so as to reduce it to a form contemplated by the Act.”

There was no appearance in the High Court on behalf of either party.

SARGENT, C. J.—We think the agreement in question is one within the contemplation of section 44 of the Dekkhan Relief Act of 1879. A comparison of the sections 41, 43, 44 and 46 of Chapter VI leads us to the conclusion that the expression “finally disposing of the matter” in sections 43 and 44 means no more than the expression “amicable settlement” in sections 41 and 46; and it would be impossible, we think, not to hold that an arrangement which provides for a plaintiff’s claim to be paid the mortgage debt at once or to have the property sold, being settled by an agreement for the payment of the debt in ten annual instalments with power to plaintiff in default of payment of any instalment to take possession and retain possession until the debt has been satisfied out of the produce of the estate is not an “amicable settlement” of that claim. As to the objection that the agreement provides for the payment of interest on any instalment remaining unpaid on the ground that the entire sum of Rs. 578 is partly made up of interest, we agree with the Special Judge that such a provision does not render the agreement an illegal one.

Order accordingly.