

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.*

BA'BA'JI AND ANOTHER, (ORIGINAL PLAINTIFFS), v. HARI AND OTHERS,  
(ORIGINAL DEFENDANTS).\*

1891.

July 20.

*The Dekkhan Agriculturists' Relief Act (XVII of 1879 as amended by Act XXII of 1882, Sec. 6), Section 15 D—Several mortgage bonds—Suit for account—Jurisdiction.*

A suit brought under section 15 D† of the Dekkhan Agriculturists' Relief Act (XVII of 1879 and XXII of 1882) must include all the mortgages affecting the land. If the total amount of the debt exceeds Rs. 500, the case does not fall under Chapter II of the Act. If it exceeds Rs. 5,000, the First Class Subordinate Judge alone has jurisdiction (see section 24 of Act XIV of 1869).

THIS was a reference made by Ráo Sáheb Rámchandra Dáji Nagarkar, Second Class Subordinate Judge of Islámpur in the Sátára District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The suit was brought by the mortgagors of certain land against the mortgagee under section 15 D of the Dekkhan Agriculturists' Relief Act (XVII of 1879 as amended by section 6 of Act XXII of 1882) for an account of the amount due. There were six mortgages in all, and the aggregate amount secured was Rs. 5,750.

In the course of the suit the plaintiff's pleader being doubtful as to the jurisdiction of the Second Class Subordinate Judge, the pecuniary limit of which is Rs. 5,000 (see section 24 of Act XIV of 1869), was allowed to amend the plaint and to withdraw the claim with regard to one of the mortgages for Rs. 900, thus reducing the aggregate amount to Rs. 4,850.

\* Civil Reference, No. 9 of 1891.

† Section 15 D (see Act XXII of 1882, section 6):—

(1) Any agriculturist whose property is mortgaged may sue for an account of the amount of principal and interest remaining unpaid on the mortgage and for a decree declaring that amount.

(2) When any such suit is brought, the amount (if any) remaining unpaid shall be determined under the same rules as would be applicable under this Act if the mortgagee had sued for the recovery of the debt.

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In consequence of this amendment the Subordinate Judge submitted the following questions for the opinion of the High Court:—

“(I) Whether, having regard to the meaning of the word ‘mortgage’ used in section 15 D, clause (1), of the Dekkhan Agriculturists’ Relief Act, the plaintiffs are bound, in a suit like the present, to include in the plaint all the mortgage-bonds by which charges have been created on the property in question, or can keep back one of them and claim an account of the rest, as they have now done ?

“(II) Whether, under section 3 (a) of the said Act it is necessary to inquire into the total of the principal amount secured by the mortgage-bonds in determining the jurisdiction of the Court, or whether that jurisdiction extends to all account suits under section 15 D irrespective of the limitation of Rs. 5,000 ?

“(III) Whether a Subordinate Judge of the second class could pass a decree as contemplated by the 3rd clause of section 15 D even though the total of the principal amount secured in bonds creating the mortgage, or the amount found due after accounts have been taken in the manner referred to in clause (2) might exceed Rs. 5,000 ?”

The opinion of the Subordinate Judge on the above questions was:—

(I) All the mortgage-bonds must be included in a suit for accounts like the present.

(II) Having regard to clause 3 of the section, the inquiry referred to must be made.

(III) In the first case referred to, a Subordinate Judge of the second class cannot pass a decree, and in the second case he would be competent to pass one.

There was no appearance for the parties in the High Court.

SARGENT, C. J. :—We think that section 15 D of Act XVII of 1879, which provides for a suit of an exceptional character, was intended to give the mortgagor the power of obtaining an account of what was due on mortgage of his property, and,

therefore, in case of there being several mortgage-bonds, the account must be taken of all of them in the same suit, and if the total amount, as in the present case, exceeds Rs. 500, the case does not fall under Chapter 2 of the Act. If it exceeds Rs. 5,000 the First Class Subordinate Judge alone has jurisdiction.

*Order accordingly.*

## APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice Parsons.*

BAPU, (ORIGINAL DEFENDANT), APPELLANT, v. DHONDI, (ORIGINAL PLAINTIFF), RESPONDENT.\*

1891.

BÁBÁJI  
v.  
HARI.

1891.

August 3.

*Suit to recover possession of mango trees—Adverse possession for twelve years by taking fruit—Easement—Section 26, Article 144, Schedule II of the Limitation Act (XV of 1877).*

The plaintiff having brought a suit to recover possession of mango trees growing on his own land, and the lower Courts having found that the defendant had, during twelve years preceding the suit, adverse possession by taking fruits thereof,

*Held*, that the claim was for possession of an interest in immoveable property and was governed by the limitation of twelve years prescribed by article 144 of the Limitation Act XV of 1877.

THIS was a second appeal from the decision of A. S. Moriarty, Assistant Judge of Sátára.

Suit to recover possession of two mango trees.

The plaintiff sued to recover from the defendant possession of two mango trees which stood on his own land. He alleged that the trees had been in his possession until he was dispossessed by the defendant on the 11th July, 1888, and that the defendant brought a possessory suit against the plaintiff in the Court of the Mámlatdár and got a decree under which he dispossessed the plaintiff. The present suit was filed on the 5th October, 1888.

The defendant, Bápu, in his written statement contended that the trees belonged to him and were in his exclusive possession for upwards of twenty-five years, and that the plaintiff's claim was, therefore, barred by limitation.

\* Second Appeal, No. 392 of 1890.