decreed the excess interest, the High Court varied the decree by allowing interest equal to the principal balance only.

On a careful consideration of all these authorities, we feel satisfied that the lower Court of appeal has correctly applied the *dámdupat* rule in limiting the amount of the interest arrears to the principal balance due (Rs. 75), and awarding 150 rupees. A contrary interpretation would make this rule of equity, intended for the relief of debtors, press hard upon them in a way not contemplated by Hindu law.

We accordingly confirm the decree, and reject the appeal with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Candy.

1895. *July* 22.

CHAGANDA'S MAGANDA'S AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* GA'NSING VALAD ISHRA'M (ORIGINAL DEFENDANT No. 1), RESPONDENT.*

Contribution—Mortgage—Sale of property subject to mortgage in execution of money decrees against mortgagors—Subsequent suit by mortgagee to recover his mortgage-debt by sale of part of mortgaged property only—Payment of mortgage-debt by holder of part of mortgaged property—Right on such payment to sue for contribution from other holders of the mortgaged property.

The owner of a portion of property comprised in a mortgage who, in order to save his share from sale, has satisfied a decree obtained by the mortgagee on the mortgage against him, can exact contribution from the owner of another portion of the mortgaged property who was not a defendant in the mortgagee's suit.

Jagat Nárain v. *Qutub Husain*(1) followed.

SECOND appeal from the decision of Ráo Bahádur N. N. Nánávati, First Class Subordinate Judge with appellate powers at Dhulia.

Suit for contribution.

In 1884, six brothers mortgaged certain property (Surveys Nos. 19 and 28 and other lands) to one Bhán. Subsequently certain money decrees were passed against the mortgagors and in execution the

* Second Appeal, No. 715 of 1893.

(1) I. L. R., 2 All., 807.

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mortgaged property was sold. At the sales defendant No. 1 (Gánsing) bought Survey No. 19, one Chunilál bought Survey No. 28 and the plaintiff bought the rest of the land.

In 1889 the mortgagee (Bháu) sued the six mortgagors and the plaintiff and Chunilál to recover Rs. 2,800 (the mortgage-debt) by the sale of all the property except Survey No. 19 which was in the hands of Gánsing (defendant No. 1) and he got a decree. In execution a part of the property was sold, and realised Rs. 860. In order to save his lands from sale, the plaintiff paid the balance of the decree. The plaintiff now sued Gánsing (defendant No. 1) for Rs. 477-12-0 as contribution, alleging that to be the share of the mortgage-debt due from Survey No. 19. He claimed to recover this amount by the sale of No. 19 and from Gánsing and the mortgagors personally.

Gánsing (defendant No. 1) contended that he had purchased Survey No. 19 at an auction sale; that the plaintiff had voluntarily paid the balance of the mortgage-debt, because the property purchased by him was superior in value to that purchased by others, and that he was not entitled to claim contribution.

The Subordinate Judge found that the plaintiff was entitled to recover the sum claimed by sale of Survey No. 19 and from defendants Nos. 2 and 3 (the mortgagors). On appeal the Judge raised the issue "Is the plaintiff entitled to claim contribution?" He found this issue in the negative, reversed the decree, and rejected the plaintiff's claim.

The plaintiffs preferred a second appeal.

Maháděo V. Bhat for the appellants (plaintiffs):—We paid the balance of the sum due under the decree to avoid the sale of the lands. All the mortgaged properties were liable to contribute rateably to the whole debt secured by the mortgage. Each sharer of the equity of redemption has to contribute in proportion to his share. When the whole mortgage-debt is apportioned on all the properties, a burden of Rs. 477-12-0 falls on Survey No. 19, which is in the possession of defendant No. 1. We rely on *Jagat Nárain* v. *Qutub Husain*[1].

Báláji A. Bhágvat for the respondent (defendant No. 1):—When Bháu Nathu brought a suit on his mortgage he omitted to claim

(1) I. L. R., 2 All. 807.

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against Survey No. 19. He gave up his claim against that part of the property. He did not make Gánsing a party to the suit. The plaintiff was a party to that suit and he ought to have insisted that Gánsing should be joined. If he had done so, then his due proportion of the mortgage-debt would have been required from Gánsing. But the plaintiff is now estopped from making this claim.

PARSONS, J.:—This case is on all fours with that of *Jagat Nárain* v. *Qutub Husain*[1] and we follow the decision. The correct finding on the second issue raised in the lower Appellate Court is, therefore, in the affirmative. As the lower Appellate Court wrongly found on this issue, and disposed of the appeal on a preliminary point, we reverse its decree, and remand the appeal to be disposed of on the merits. Costs to abide the result.

Decree reversed and case remanded.

(1) I. L. R., 2 All., 807.

CRIMINAL REFERENCE.

Before Mr. Justice Jardine and Mr. Justice Ránade.

THE MUNICIPALITY OF BOMBAY *v.* SHA'PURJI DINSHA.*

1895. *July* 22.

Bombay Municipal Act (III of 1888), Sec. 248—Fazendár—Fazendár not liable to provide privy accommodation—"Owner"—"Premises"—Meaning of the words—Construction—Construction of statutes.

A fazendár is not the person liable, as owner of the premises, to provide privy accommodation under section 248 of the Bombay Municipal Act (III of 1888(1)), the beneficial owner of the house built on the fazendár's land being "the owner" within the meaning of the section.

Per RÁNADE, J.:—The word "premises" in section 248(1) of the Municipal Act is used with reference to the building to which the privy belongs.

THIS was a reference by W. R. Hamilton, Second Presidency

* Criminal Reference, No. 66 of 1895.

(1) Section 248 of Act III of 1888 (Bombay):—

(1) If it appears to the Commissioner that any premises are without a water-closet or privy or urinal, or that the existing water-closet or privy or urinal available for the occupiers of any premises is insufficient, inefficient or, for sanitary reasons, objectionable, the Commissioner shall, by written notice, require the owner of such premises to provide a water-closet, or privy or urinal or an additional water-closet, privy or urinal, as the case may be, to his satisfaction.

(2) Provided that where a water-closet, privy or urinal has been or is used in common by the occupiers of two or more premises, or if in the opinion of the Commissioner a water-closet, privy or urinal may be so used and is sufficient for all the occupiers of the two or more premises using or intending to use the same, he need not require a separate water-closet or privy or urinal to be provided on or for each of the said premises.