

1899.

IN RE
DADABHAI
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of the Magistrate be reversed, and the case sent back for trial on the charge under section 110 of the Railways Act of 1890. The finding of the Magistrate on the charges under sections 504 and 298 of the Indian Penal Code in Application No. 169 of 1899, and under sections 298 and 109 of the Indian Penal Code in Application No. 168 of 1899 is not disturbed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1899.

November 14.

TANIRAM (ORIGINAL PLAINTIFF), APPELLANT, v. GAJANAN (ORIGINAL DEFENDANT NO. 3), RESPONDENT.*

Transfer of Property Act (IV of 1882), Secs. 87, 88, 89 and 93—Mortgage—Decree for sale of mortgaged property—Default in payment on the date fixed in the decree—Redemption—Power to enlarge the time.

In a suit brought by a mortgagee for sale of the mortgaged property, a decree was passed on 27th July, 1895, directing that the mortgagor should pay the mortgage debt within six months, and that in default his right of redemption should be foreclosed and the mortgagee should be at liberty to sell the property.

On the 27th July, 1898, the mortgagee applied for an order absolute for sale.

On the 11th October, 1898, the mortgagor applied for permission to pay into Court the amount of the decree.

Held, that the application could not be granted. The case fell within sections 88 and 89, and not within sections 87 or 93, of the Transfer of Property Act (IV of 1882). The money not having been paid within the appointed time, the Court was bound to pass an order absolute for sale; it had no power to enlarge the time for payment.

SECOND appeal from the decision of R. S. Tipnis, District Judge of Khândesh.

On the 7th July, 1893, one Taniram sued Dhaklu and Khandu to recover Rs. 706 as the amount due under a mortgage by sale of the mortgaged property.

Gajanan was made as a party defendant, on the ground that he had purchased the equity of redemption.

On 27th July, 1895, a decree was passed directing that Gajanan should pay to the (plaintiff) mortgagee Rs. 92 and interest at 12 per cent. per annum from the date of the mortgage till the date

* Second Appeal, No. 500 of 1899.

of payment within six months from the date of the decree, and that, in default, the right of redemption should be foreclosed, and Taniram should be at liberty to sell the property.

On 27th July, 1898, the decree-holder applied for an order absolute for sale.

Pending this application Gajanan applied on 11th October, 1898, for permission to pay into Court the amount of the decree. The Subordinate Judge refused to take the amount tendered, on the ground that he had no power to enlarge the time fixed by the decree, and that the right to redeem was foreclosed.

On appeal this order was reversed by the District Judge for the following reasons :—

“It does not appear that Taniram has hitherto taken any steps to obtain an order under section 93 of the (Transfer of Property) Act in the nature of a decree absolute. Taniram's *darbhāst* for sale of the mortgaged property in pursuance of the decree *nisi* is obviously premature—I. L. R., 22 Bom., 771. Until the decree is made absolute, Gajanan has a right not only to pay up the decreed amount, but to apply for extension of time for payment. The lower Court was bound to receive the amount tendered by Gajanan.”

On these grounds, the District Judge directed that the amount offered by Gajanan should be received, and further steps be taken in the matter according to law.

Against this order, Taniram, the decree-holder, appealed to the High Court.

M. V. Bhat for appellant.

M. B. Chaubal for respondent.

PARSONS, J. :—The citation by the District Judge of section 93 of the Transfer of Property Act and of the ruling in the case of *Nandram v. Babaji*⁽¹⁾ is in no way relevant to the present case, as they apply only to a suit for redemption. The suit in the present case was one for sale, and the decree ordered that Gajanan should pay to Taniram, within six months from its date, Rs. 92, and that, in default, Gajanan's right of redemption would be foreclosed and Taniram would be at liberty to sell the property. The decree was dated 27th July, 1895. No money was paid, and on the 27th July, 1898, Taniram asked for an order absolute for sale.

(1) (1897) 22 Bom., 771.

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On the 11th October, 1898, Gajanan asked to be allowed to pay into Court the amount of the decree. The Subordinate Judge thought the payment too late, and refused to accept it. The District Judge thought that "until the decree was made absolute, Gajanan had a right not only to pay the decreed amount, but to apply for extension of time for payment." No doubt this would be so if either section 87 or section 93 of the Transfer of Property Act applied. We cannot, however, apply either of those sections, but must apply sections 88 and 89 of the said Act. This being so, when the money was not paid within the appointed time and Taniram applied to the Court for an order absolute for sale, it was obligatory on the Court to pass an order that the property be sold; and it had no power to postpone the day appointed for the payment.

For this reason we reverse the order of the District Judge and restore that of the Court of first instance with costs on the respondent throughout.

ORIGINAL CIVIL.

Before Sir L. H. Jenkins, Kt., Chief Justice, and Mr. Justice Tayabji.

1900.
*February 23
and March 2.*

JAMSETJI DADABHOY BARIA AND OTHERS (ORIGINAL DEFENDANTS),
APPELLANTS, v. DADABHOY DAJIBHOY BARIA (ORIGINAL PLAINTIFF),
RESPONDENT.*

Appeal—Decree for account—Further directions—Time for appeal—Letters Patent, Sec. 15—Civil Procedure Code (Act XIV of 1882), Sec. 591.

A decree was passed in a partnership suit directing (*inter alia*) the taking of an account. The Commissioner having taken the account and made his report, an order was made, on further directions, varying it in certain respects. Subsequently a final decree was passed, founded in part on the order on further directions. An appeal was filed against the final decree, in which objection was taken to the order on further directions. It was contended that no appeal having been filed against the order on further directions, as might have been done under section 15 of the Letters Patent, so much of the appeal as arose out of that order had been barred by lapse of time.

Held, that the order passed on further directions was not appealable under Chapter XLI of the Civil Procedure Code (Act XIV of 1882), and that it fell, therefore, under the concluding portion of section 591 of the Civil Procedure

* Suit No. 617 of 1891. Appeal No. 1015.