

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Batchelor.

BAI DIWALI (ORIGINAL DEFENDANT), APPELLANT, v. PATEL GIRDHAR
GOVINDRAM (ORIGINAL PLAINTIFF), RESPONDENT.*

1908.

February 28.

Civil Procedure Code (Act XIV of 1882), section 13—Dekkhan Agriculturists' Relief Act (XVII of 1879), section 20⁽¹⁾—Suit on a promissory note—Issue as to payment by instalments—Finding in the negative—Extension of the Dekkhan Agriculturists' Relief Act (XVII of 1879) to the District—Application for instalments—Res Judicata.

In a suit instituted in the Court of the First Class Subordinate Judge of Ahmedabad on a promissory note an issue was raised as to whether the amount sued for should be made payable by instalments and the finding was in the negative. The suit was decreed on the 21st July 1905. The Dekkhan Agriculturists' Relief Act (XVII of 1879) was extended to the Ahmedabad District on the 15th August 1905. Thereupon the defendant having applied for payment by instalments the application was dismissed on the ground that the question of instalments was *res judicata*.

Held that section 13 of the Civil Procedure Code (Act XIV of 1882) was not applicable. Section 20 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) contemplates that even when a decree has been passed which does not allow of instalments, the Court should have power to allow instalments in execution.

SECOND APPEAL from the decision of A. C. Wild, Acting District Judge of Ahmedabad, confirming the order of Chimanlal Lallubhai, First Class Subordinate Judge, in an execution proceeding.

The plaintiff brought a suit in the Court of the First Class Subordinate Judge of Ahmedabad against Bai Diwali, widow of Nahabhai Mulji, to recover the amount of a promissory note passed by the defendant's deceased husband. At the trial an issue

* Second Appeal No. 685 of 1907.

(1) Section 20 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) :—

20. Power to fix instalments in execution.

The Court may at any time direct the amount of any decree passed, whether before or after this Act comes into force, against an agriculturist, or the portion of the same which it directs under section 19 to be paid, shall be paid by instalments with or without interest.

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was raised as to whether the amount should be made payable by instalments and the finding of the Court was in the negative. On the 21st July 1905 the Court passed a decree allowing the claim and directing that the decretal amount should be realized from the assets of the deceased. Subsequently the Dekkhan Agriculturists' Relief Act was extended to the Ahmedabad District on the 15th August 1905. The defendant thereupon applied for the payment of the amount by instalments. The Subordinate Judge rejected the application as time-barred under article 175, Schedule II of the Limitation Act (XV of 1877).

On appeal by the defendant the District Judge found that the application was not time-barred inasmuch as under section 20 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) "an application for instalments may be made at any time without any period of limitation," but he confirmed the order on the ground of *res judicata* for the following reason :—

It was however decided in the suit out of which the present matter arises that the judgment-debtor was not to get instalments, and as this was reduced to the form of an issue which was decided against the judgment-debtor, the question of instalments would appear to be "*res judicata*."

The defendant preferred a second appeal.

T. B. Desai for the appellant (defendant) :—The only point is whether an application for instalments once made and rejected in the progress of the suit debars a subsequent application for the same relief in the execution proceedings. The District Judge erroneously held that the bar of *res judicata* arises in a case like the present. The language of section 20 of the Dekkhan Agriculturists' Relief Act is quite clear. It leaves a wide latitude to Courts to allow instalments at any stage of the case. Courts should have regard to the spirit of the section and the object of the legislature in construing a special enactment like the Dekkhan Agriculturists' Relief Act. If the legislature meant the contrary, there would have been an express provision made to that effect.

L. A. Shah for the respondent (plaintiff) :—What the Court has to see is whether the case falls under section 13 of the Civil Procedure Code. The relief as to instalments was the subject

of an express issue in the suit and was adjudicated upon and decided against the defendant. Though the Dekkhan Agriculturists' Relief Act was extended to the Ahmedabad District in August 1905, still section 20 of the Act was made applicable to that district in 1903. Therefore when the suit was decided in July 1905 the Court had the power, if it chose, to grant instalments under the section. But it refused to do so and hence the bar of *res judicata*.

JENKINS, C. J.—The decision of the District Court proceeds on the assumption that the doctrine of *res judicata* has some application to the case. But that is not so.

Section 13 of the Civil Procedure Code from its very terms cannot apply, and though that section is not exhaustive, the rule on which it is founded can have no application here, because section 20 of the Dekkhan Agriculturists' Relief Act contemplates that even when a decree has been passed which does not allow of instalments, the Court shall have power to allow instalments in execution.

The order must be set aside and the case must go back for disposal by the learned Judge who must consider whether apart from the ground on which he has proceeded, the instalment should or should not be granted.

Costs of this appeal will abide the result.

Order set aside.

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