

so, but, *prima facie*, when there is nothing said about it, a person has the same right of appointing an agent for the purpose of exercising a statutory right as for any other purpose."

The legislature, which must be taken to have been aware of the rule of Hindu law above stated when it passed the Dekkhan Agriculturists' Relief Act, has not by any of the provisions expressly or impliedly dispensed with that rule. The certificate, obtained by one of the plaintiffs on behalf of the rest, enures, therefore, for the benefit of all.

For these reasons we must overrule the point urged in support of this second appeal and confirm the decree with costs.

R. R.

APPELLATE CIVIL.

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

HAZARIMAL FAKIRCHAND, APPLICANT, *v.* NAMDEV RAKHMAJI
AND ANOTHER, OPPONENTS.*

1908.

February 20.

Civil Procedure Code (Act XIV of 1882), section 294—Execution of decree—Decree holder bidding for property with permission—Right to set off amount due to decree holder against purchase money.

The first paragraph of section 294 of the Civil Procedure Code (Act XIV of 1882) requires the permission of the Court to enable the holder of a decree to bid for property. If he gets that permission and gets it without qualification, then the amount due on the mortgage may, if he so desires, be set off. But it may be one of the terms on which the permission to bid is granted that there should not be this right of set off. In such a case no set off can be directed.

CIVIL REFERENCE by E. Reuben, Subordinate Judge of Haveli in the Poona District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

One Hazarimal Fakirchand was the assignee of a decree passed by the Court of the Subordinate Judge at Haveli against Nam-

* Civil Reference No. 6 of 1907.

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dev Rakhmaji and Tukaram Rakhmaji. In execution of the said decree certain immoveable property having been advertised for sale, the decree holder Hazarimal applied to the Collector, to whom the decree was transferred for execution, and obtained from him permission to bid and purchase under the first paragraph of section 294 of the Civil Procedure Code (Act XIV of 1882). But the Collector having no power under the second paragraph of the section to allow purchase money to be set off against the decretal amount, Hazarimal applied to the Court which passed the decree for such permission. The Subordinate Judge, thereupon, submitted the following question under section 617 of the Civil Procedure Code:—

Whether in the case of decrees transferred to the Collector for execution the Court has power to allow a set off between the purchase money and the decretal amount under section 294, paragraph 2, of the Civil Procedure Code?

The opinion of the Subordinate Judge was in the affirmative for the following reasons:—

While the power to allow a set off is not conferred on the Collector, the decree holder is required by Rule 16 (1) (c)—given on page 52 of the High Court Circular Book—to agree that the “purchase money shall be paid to the Collector.”

This is interpreted as implying that in such cases the purchase money must always be paid down in cash without setting it off against the decretal amount.

* * * * *

My order on the present application would not come under section 588, Civil Procedure Code, and would accordingly be non-appealable.

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My opinion is that the Civil Court's power to allow a set off is not taken away by the fact that the decree is sent to the Collector for execution.

According to section 320, Civil Procedure Code (*vide* last paragraph but one), it is only such powers as are conferred on the Collector that are not exercisable by the Court. And the power to allow set off being distinct from the power to grant permission to a decree holder to bid and purchase and not being conferred on the Collector is still exercisable by the Court.

N. M. Palwardhan (amicus curiæ) for the applicant.

P. D. Bhide (amicus curiæ) for the opponents.

JENKINS, C. J. :—No reference in this case lies, because no order can be made under the second paragraph of section 294 of the Code of Civil Procedure. That section is perfectly clear. The first paragraph of that section requires the permission of the Court to enable the holder of a decree to bid for property. If he gets that permission and gets it without qualification, then the amount due on the mortgage may, if he so desires, be set off. But it may be one of the terms on which permission to bid is granted that there should not be this right of set off. That seems to be the case here. It is clear then that the Subordinate Judge has no power to direct a set off.

We are obliged to the pleaders who have assisted us with their arguments in this case.

Order accordingly.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

GANGARAM KEVAL AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS,
v. NAGINDAS KHUSHALDAS (ORIGINAL PLAINTIFF), RESPONDENT.*

1908.

February 24.

Civil Procedure Code (Act XIV of 1882), section 11—Suit of a civil nature—Administration suit—Estate belonging to a living Hindu debtor—Competency to entertain the suit.

A Civil Court cannot entertain a suit brought to administer the estate belonging to a living Hindu debtor.

Bai Meherbai v. Maganchand⁽¹⁾, explained.

APPEAL from an order passed by Dayaram Gidumal, District Judge of Surat, reversing the decree passed by and remanding the case to Jehangirji E. Modi, First Class Subordinate Judge at Surat.

Administration suit.

* Appeal No. 7 of 1907 from order.

(1) (1904) 29 Bom. 96; 6 Bom. L. R. 853