1909.

NAVLAJI SARDARMAL v. RAMA DHONDI.

decree of the original Court and not of the Court of appeal. It would follow that if the Court of appeal reversed the decree of the lower Court and passed an entirely new decree it would not be "the decree in the suit" though it would be the only existing decree capable of execution. If the words had been "a decree" there would have been more force in the argument. When the decree of the lower Court is reversed in appeal, or varied in appeal, the decree of the lower appellate Court becomes the decree in the suit which is to be executed in execution proceedings. We, therefore, think that the learned Judge of the lower Court acted within his powers in granting the application of the plaintiff for a decree for redemption.

We dismiss the appeal with costs.

Appeal dismissed.

G. B. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

SHANKAR RAMKRISHNA CHOLKAR (ORIGINAL PLAINTIFF), APPELLANT, *v.* KRISHNAJI GANESH BADE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1909. *September* 28.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2, clause 2(1)—Amending Act (XXIII of 1881)—Ratnágiri District—Mortgage of 1881—Suit for account—Agriculturist.

The plaintiff whose land and residence was in Ratnágiri District executed a mortgage in the year 1881. The Dekkhan Agriculturists' Relief Act (XVII

* First Appeal No. 106 of 1908.

(1) Section 2, clause 2 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) runs as follows:—

2. In construing this Act, unless there is something repugnant in the subject or context, the following rules shall be observed namely:

1st * * * * * * *

Second.—In Chapters II, III, IV and VI, and in section 69, the term "Agriculturist," when used with reference to any suit or proceeding, shall include a person, who, when any part of the liability which forms the subject of that suit or proceeding was incurred, was an agriculturist within the meaning of that word as then defined by law.

1909.

SHANKAR RAMKRISHNA v. KRISHNAJI GANESH.

of 1879) which extended to the districts of Poona, Sátára, Sholápur and Ahmednagar, was not applicable to the Ratnágiri District in the year 1881. In the year 1896 the plaintiff brought a suit for an account of what was due on the mortgage under the provisions of section 15 (D) of the Act (XVII of 1879) and contended that he was an agriculturist in 1881, that is, when the liability under the mortgage was incurred.

Held that the plaintiff could not sue under section 15D of the Act (XVII of 1879) as he was not an agriculturist within the meaning of the Amending Act (XXIII of 1881).

The expression "then defined by law" in section 2, clause 2 of the Act (XVII of 1879) relates to the time when any part of the liability was incurred.

FIRST appeal from the decision of V. N. Kalurkar, First Class Subordinate Judge of Ratnágiri, in Suit No. 108 of 1906.

The plaintiff, who alleged himself to be an agriculturist within the meaning of section 2, clause 2 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), brought the present suit under section 15D of the Act for an account of seven mortgages ranging from the year 1835 to 1881. The first six mortgages were passed by the ancestors of the plaintiff and the seventh was passed by the plaintiff himself on the 4th November 1881. The plaintiff alleged that he was an agriculturist both when he executed the last mortgage and when the suit was instituted in 1906.

The defendants' creditors denied the plaintiff's status as an agriculturist.

The Subordinate Judge found that the plaintiff was not an agriculturist either at the time of the suit or at the time when the liability was incurred within the meaning of section 2 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). He, therefore, dismissed the suit as the same could not be entertained under section 15D of the Act. The following were his reasons:—

In determining the status the income of the family must be taken into consideration. The non-agricultural income derived by the family is Rs. 720 a year and the agricultural income is Rs 165. The principal source of livelihood at the time of the suit was evidently other than agriculture. Plaintiff was not an agriculturist at the institution of the suit. It is contended that the plaintiff can come in under clause 2 of section 2 of the Dekkhan Agriculturists' Relief

Act and was an agriculturist at the time when the liability was incurred, *i. e.*, at the time of the mortgage of the 4th November 1881.

The suit for account under section 15D falls under Chapter III. It is one of the suits referred to in clause 2 of section 2. The term agriculturist when used with reference to such a suit includes a person, who, when any part of the liability, which forms the subject of the suit, was incurred, was an agriculturist within the meaning of that word *as then defined* by *law*.

The term 'agriculturist' has undergone several changes. It was by Act XXII of 1882 that the person, who was an agriculturist at the time when the liability was incurred, was included in the term 'agriculturist'. The person had to establish his status of an agriculturist as defined by that Act. If a person incurred a liability in 1880 he had to prove that he came within the definition given in the Act of 1882. To avoid the inconvenience and hardship the present wording was introduced in 1895 by Act VI of 1895. The words "within the meaning of that word as then defined by law" were substituted for the words "as defined in the first rule". Thus if a liability was incurred in 1880 the status in 1880 could be established according to the definition given in the Dekkhan Agriculturists' Relief Act in force in that year and not in the year of suit.

From the history of the use of the words "as then defined by law" at the end of clause 2 it is evident that by 'law' is meant the Dekkhan Agriculturists' Relief Act and not any other Act

On the date of the mortgage of 1881 the Dekkhan Agriculturists' Relief Act as amended by Act XXIII of 1881 was in force in the four districts of Poona, Sátára, Sholápur and Nagar. An agriculturist within the meaning of that Act must have earned his livelihood by agriculture carried on within the limits of the said four districts. Plaintiff did not carry on agriculture in any one of the said four districts. He cannot therefore come in under clause 2 of section 2 of the Dekkhan Agriculturists' Relief Act. The result of this construction is that a person residing outside the four said districts and wishing to come in under clause 2 must have incurred the liability subsequently to the extension of the Dekkhan Agriculturists' Relief Act to his district. Plaintiff carried on agriculture in Ratnágiri District to which a part of the Act was extended in 1905. He cannot come under clause 2 and consequently was not an agriculturist at the time when the liability was incurred within the meaning of section 2.

The plaintiff appealed.

D. A. Khare for the appellant (plaintiff).—The lower Court erred in holding that we are not agriculturist. We are agriculturist now. Our income from agriculture exceeds our income derived from other sources. We were agriculturist when the mortgage of 1881 was executed. No doubt when the mortgage

1909.

SHANKAR RAMKRISHNA v. KRISHNAJI GANESH.

liability was incurred the Dekkhan Agriculturists' Relief Act was not in force in the Ratnágiri District but it is clear from the language of section 1 of the Act that the provisions of sub-section 2 of clause (*b*) of section 2 will cover the present case. The ruling in *Mahadev Narayan* v. *Vinayak Gangadhar*[1] does not apply. That case was from the Poona District in which the Act came into force in 1879 and the liability was incurred prior to the passing of the Act.

P. B. Shingne for respondents 1, 3, 7 and 8 (defendants 1, 3, 7 and 8); and

P. D. Bhide for respondents 2, 4, 11 and 13 (defendants 2, 4, 11 and 13) were not called upon.

SCOTT, C. J.:—[His Lordship, after dwelling on another part of the case not material to this report, continued :—]

It is said that, at all events, with regard to one of the mortgages in suit, namely, that executed in the year 1881, the plaintiff is entitled to maintain this suit because the second clause of section 2 of the Dekkhan Agriculturists' Relief Act provides that "the term 'agriculturist' when used with reference to any suit or proceeding, shall include a person who, when any part of the liability which forms the subject of that suit or proceeding was incurred, was an agriculturist within the meaning of that word as then defined by law." "Then defined by law" relates to the time 'when' any part of the liability was incurred. We, therefore, have to look to the definition of the word 'agriculturist' in the year 1881, the date of the mortgage in question.

"Agriculturist" by Act XXIII of 1881 amending the principal Act was defined to be "a person who, when or after incurring any liability, the subject of any proceeding under this Act, by himself, his servants or tenants earned or earns his livelihood, wholly or partially, by agriculture carried on within the limits of the said districts." In order to ascertain what is meant by 'the said districts' we turn to section 1 of the Act which in the year 1881 provided that the rest of the Act extends only to the districts of Poona, Sátára, Sholápur and Ahmednagar. It follows

(1) (1909) 33 Bom. 504.

that the plaintiff whose land and whose residence was in Ratnágiri was not an agriculturist within the meaning of Act XXIII of 1881.

For these reasons we affirm the decree of the lower Court and dismiss this appeal with costs. Only one set of costs.

Decree affirmed.

G. B. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

PILU BIN APPA NALVADE (ORIGINAL PLAINTIFF), APPELLANT, *v.* BABAJI BIN NARU MANG AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1909. *October* 1.

Hindu Law—Alienation by widow—Consent by the body of reversioners—Transfer for legal necessity—Transaction for consideration—Gift—Partial relinquishment by widow.

The general principle which prohibits a Hindu widow's alienation of immoveable property otherwise than for legal necessity is relaxed in cases where the consent of the whole body of persons constituting the next reversion has been obtained. The reason for the relaxation is referred to the principle that the consent of the persons who would be interested in disputing the transfer affords good evidence that the transfer was in fact made for justifying cause, that is, for legal necessity.

Bajrangi Singh v. *Manokarnika Bakhsh Singh*(1) and *Vinayak* v. *Govind*(2) followed.

The operation of the principle is ordinarily limited to transfers for consideration and cannot be extended to voluntary transfers by way of gift where there is no room for the theory of legal necessity. It should not be extended to cases where the widow has made only a partial relinquishment of the estate.

SECOND appeal from the decision of C. Roper, District Judge of Sátára, confirming the decree of V. V. Tilak, First Class Subordinate Judge of Sátára.

* Second Appeal No. 183 of 1909.

(1) (1907) 30 All. 1. (2) (1900) 25 Bom. 129.