

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

FRIMBAK KASHIRAM SHIMPI AND ANOTHER (ORIGINAL PLAINTIFFS),
APPELLANTS, v. ABAJI VALAD CHIMNAJI PATEL KHUDE AND OTHERS
(ORIGINAL DEFENDANTS), RESPONDENTS.*

1911.
February 23.

Construction of statute—Repeal—Civil Procedure Code (Act XIV of 1882), section 257 A—Civil Procedure Code (Act V of 1908) repealing section 257 A—Effect of the repeal on section 13, clause (c) † of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

Section 13, clause (c) of the Dekkhan Agriculturists' Relief Act (XVII of 1879) not having been expressly repealed is not affected by the repeal of section 257A of the Civil Procedure Code, 1882, by the Civil Procedure Code of 1908.

SECOND appeal from the decision of Gulabdas Laldas Nana-vati, First Class Subordinate Judge, A. P., at Nasik, varying the decree passed by R. K. Bal, Subordinate Judge of Sinnar.

The plaintiff filed this suit to recover the money due on a mortgage, which was passed to him by the defendants for Rs. 938-6-4.

The defendants in their written statements admitted the genuineness of the deed, but pleaded that they were agriculturists and asked for accounts to be taken as provided by the Dekkhan Agriculturists' Relief Act, 1879, and prayed for instalments.

* Second Appeal No. 344 of 1910.

† The material portions of the section run as follows :—

13. When the Court enquires into the history and merits of a case under section 12, it shall—

* * * * *

open the account between the parties from the commencement of the transactions and take that account according to the following rules (that is to say) :—

* * * * *

(c) in the account of principal there shall not be debited to the debtor any money which he may have agreed to pay in contravention of section 257A of the Code of Civil Procedure.

1911.

TRIMBAK
KASHIRAM
v.
ABAJI.

The Subordinate Judge found that a part of the consideration for the mortgage-deed was a decretal debt; and though the sanction of the Court under section 257A of the Civil Procedure Code of 1882 for its incorporation in the mortgage was not taken, the whole consideration remained valid, as section 257A was repealed by the new Civil Procedure Code of 1908; and section 13, clause (c) of the Dekkhan Agriculturists' Relief Act, 1879, became therefore inoperative. He, therefore, took accounts and found Rs. 1,330-4-0 remaining due on the mortgage, for which he passed a decree in the plaintiff's favour.

The First Class Subordinate Judge, on appeal, came to the conclusion that section 13, clause (c) not having been expressly repealed, was not affected by the repeal of section 257A. He therefore held that so much of the consideration of the mortgage as offended against the section should be excluded if it was severable, and accounts taken of the remainder. Taking the accounts, on that basis, he found Rs. 480 due on the mortgage, which he made payable in six equal annual instalments.

The plaintiff appealed to the High Court.

D. R. Patwardhan, for the appellants:—Section 257A of the Civil Procedure Code (Act XIV of 1882) does not apply to this case. The section is repealed by the new Civil Procedure Code of 1908. The repeal has the effect of repealing by implication, section 13 (c) of the Dekkhan Agriculturists' Relief Act, 1879.

R. R. Desai, for the respondents:—The present suit was filed when the Civil Procedure Code of 1882 was in force; it is therefore governed by that Code and not by the Civil Procedure Code of 1908. Moreover section 13, clause (c) of the Dekkhan Agriculturists' Relief Act, 1879, involves a question of right and is not merely procedural. See *Falmabibi v. Ganesh*⁽¹⁾.

Further, even if the Code of 1908 were held to apply, the repeal of section 257A of the Code of 1882 cannot affect section 13, clause (c) of the Dekkhan Agriculturists' Relief Act, 1879. See Maxwell on the Interpretation of Statutes, 3rd edition,

(1) (1907) 31 Bom. 630

pp. 590-591; *Reg. v. Stock*⁽¹⁾; *Reg. v. Inhabitants of Merionethshire*⁽²⁾; *Reg. v. Smith*⁽³⁾; *Clarke v. Bradlaugh*⁽⁴⁾; section 158 of the Civil Procedure Code of 1908; and the General Clauses Act (X of 1897), section 6, clauses (c) and (e).

D. R. Patvardhan was heard in reply.

CHANDAVARKAR, J. :—The question is whether section 13 (c) of the Dekkhan Agriculturists' Relief Act must be regarded as repealed in consequence of the repeal of section 257A of the old Code of Civil Procedure (Act XIV of 1882) by the new Code (Act V of 1908). That section of the Dekkhan Agriculturists' Relief Act incorporates by reference section 257A of the old Code; and it is argued by Mr. Patvardhan for the appellant that its repeal has the effect of repealing section 13, clause (c) of the Act also. But in the words of Brett, L. J., in *Clarke v. Bradlaugh*⁽⁴⁾: "Where a statute is incorporated by reference into a second statute, the repeal of the first . . . by a third does not affect the second." See also Maxwell on Statutes, 3rd edition, p. 590.

For these reasons, the decree must be confirmed with costs.

Decree confirmed.

R. R.

(1) (1338) S. A. & E. 405.

(3) (1873) L. R., S. Q. B. 146.

(2) (1814) 6 Q. B. 343.

(4) (1831) S. Q. B. D. 63 at p. 69.

1911.

TRIMBAK
KASHIRAM
*
ABAJI.