

1890.

KÁSHINÁTH  
NARÁYAN  
v.  
GOVINDA BIN  
PIRAJI.

We reverse the decrees of the Courts below, and direct that, on the plaintiff making up the deficient stamp on the plaint, the suit be proceeded with according to law. Costs to be costs in the cause.

*Decree reversed.*

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## APPELLATE CIVIL.

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*Before Mr. Justice Bayley and Mr. Justice Parsons.*

1890.  
August 12.

BA' LKRISHNA BA'BA'JI, (ORIGINAL PLAINTIFF), APPELLANT, v. HARI GOVIND, (ORIGINAL DEFENDANT), RESPONDENT.\*

*Interest—Rule of dām dupat—Its application to mortgages where no account of rent and profits is to be taken—Mortgage.*

The rule of *dām dupat* applies to mortgages where no account of the rents and profits has to be taken.

SECOND appeal from the decision of Mr. H. Scott, District Judge of Sātára, in Appeal No. 123 of 1888 of the District File.

The plaintiff sued, as purchaser of the equity of redemption, to redeem certain property which had been mortgaged with possession under two bonds. One bond was passed in A.D. 1835 for Rs. 350, and provided that the whole of the rents and profits of the property mortgaged should be taken in lieu of interest. The other bond was passed in A.D. 1838 for Rs. 25, for which interest was to be paid at 12 per cent. for the first six months and then at 24 per cent. *per annum*.

The Subordinate Judge held that the mortgagee was not entitled to claim interest exceeding the principal under the second mortgage. He found, on taking accounts, that a sum of Rs. 619-11-11 was due to the mortgagee, and decreed redemption on payment of this amount within six months.

On appeal, the District Judge held, on the authority of *Naráyan v. Gangáráam*<sup>(1)</sup>, that the rule of *dām dupat* did not apply to mortgages. He amended the decree of the Subordinate Judge by directing that the plaintiff should pay Rs. 798-0-1 within six months and redeem the property, or be for ever foreclosed.

\* Second Appeal, No. 697 of 1888.

(1) 5 Bom. H. C. Rep., 157, A. C. J.

Against this decision the plaintiff appealed to the High Court.  
*Mahádev Chimnáji Apte* for appellant.

*Rámchandra Ganesh Mundle* for respondent.

1890.

BALKRISHNA  
 BABAJI  
 v.  
 HARI  
 GOVIND.

BAYLEY, J. :—The District Judge is wrong in saying that the rule of *dám dupat* does not apply to mortgages. The decision he quotes, *Nárayan v. Gangáram* <sup>(1)</sup>, is, no doubt, to that effect; but the proposition has there been laid down too broadly, as is shown in later cases. See *Nathubháí Panáchand v. Mulchand Hiráchand* <sup>(2)</sup>; *Nárayan v. Satváji* <sup>(3)</sup>; *Ganpat Pándurang v. A'darji Dáclábhái* <sup>(4)</sup>. The rule does apply to mortgages where no account of the rents and profits has to be taken, as is the case here <sup>(5)</sup>.

We, therefore, amend the appellate Court's decree by substituting Rs. 680-13-5 for Rs. 798-0-1, and by directing that, on payment within six months of this date of that sum plus or minus, as the case may be, any sum that may be found due to either party in execution on taking accounts under the first mortgage from the 17th April, 1889, to date of payment, and of the costs of the defendant that he has been ordered to pay, plaintiff redeem, and that, in default of such payment, he be for ever foreclosed.

Each party to bear his own costs in this and the lower appellate Court.

*Decree amended.*

(1) 5 Bom. H. C. Rep., A. C. J., 157.

(3) 9 Bom. H. C. Rep., A. C. J., 83.

(2) 5 Bom. H. C. Rep., A. C. J., 196.

(4) I. L. R., 3 Bom., 312, at p. 333.

(5) W. & B., p. 786, 3rd ed.