section 80 is to attribute to the Legislature an inconsistency which ought to be avoided. In reading the section, as I now read it, it appears to me that full effect is given to its object and intent, while the opposite construction leads directly to inconsistency and injustice. It is small gain to a private person to enact that he may have redress against a defendant after two months' notice if, during the currency of the two months, the defendant is allowed to make redress impossible. The right of suit, which is expressly granted by the Legislature, cannot, in reason, be deferred until its exercise has become illusory. This view has the support of the observations recorded by Mr. Justice Chandavarkar and Mr. Justice Heaton in the case of *Secretary of State* v. *Gajanan Krishnarao*.[1]

No other point has been taken in this appeal by the appellant, and I am, therefore, of opinion that the appeal fails and should be dismissed with costs.

SHAH, J. :—I am of the same opinion.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

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

GAUTAM JAYACHAND GUJAR (ORIGINAL PLAINTIFF), APPELLANT *v.* MALHARI BIN BAPU BHONG (ORIGINAL DEFENDANT), RESPONDENT.*

1916.

February 16.

Dekkhan Agriculturists' Relief Act (XVII of 1879), sections 3, clause (y) *and 10A—Suit for possession under a sale deed—Contemporaneous lease—Nature of suit—Intention of parties.*

The plaintiff relying on his sale-deed of 1887 sued to recover possession of the land in s alleging that the defendant held it as his tenant under a lease

(1) (1911) 35 Bom. 362 at p. 365.

* Second Appeal No. 7 of 1915.

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GAUTAM JAYACHAND v. MALHARI.

of even date with the sale-deed. The defendant pleaded that his father and not the plaintiff was the purchaser under the deed of 1887, that the plaintiff was the savkar (creditor) who advanced money and the payment of interest was secured by the contemporaneous lease. Both the lower Courts went into the question of intention of the parties under section 10A of the Dekkhan *Agriculturists'* Relief Act and found the defendant's case established on facts. On appeal to the High Court,

Held, that the case was rightly disposed of under section 10A of the Dekkhan Agriculturists' Relief Act. The nature of the suit under clause (*y*) of section 3 of the Act should not be determined by the frame of the plaint, but by the allegations of the parties which raised the question of mortgage or no mortgage.

SECOND appeal against the decision of R. S. Broomfield, Assistant Judge of Poona, confirming the decree passed by H. K. Mehta, Subordinate Judge at Baramati.

Suit to recover possession.

The land in suit originally belonged to one Achyut.

Achyut executed a sale-deed in favour of the plaintiff on the 15th January 1887.

On the same day the land was leased by plaintiff to defendant's father Bapu who had been Achyut's tenant. Other leases were given to Bapu and the defendant from time to time, the last of which was dated the 12th November 1908.

On the strength of the lease of 12th November 1908, the plaintiff sued to recover possession of the land from the defendant.

The defendant contended that his father, and not the plaintiff, was the purchaser from Achyut, that the plaintiff was the savkar who advanced money and the payment of interest was secured by the contemporaneous lease.

The subordinate Judge went into the question of intention of the parties under section 10A of the

Dekkhan Agriculturists' Relief Act, and held that the land was purchased by the plaintiff in his own name on behalf of the defendant's father, the plaintiff agreeing to reconvey on payment of purchase money. He, therefore, allowed the defendant to redeem the land.

The District Court, on appeal, confirmed the decree.

The plaintiff preferred a second appeal.

D. A. Khare, for the appellant.

K. H. Kelkar, for the respondent.

SCOTT, C. J.:—The plaintiff claims as the owner of the land in suit under a sale-deed executed in his favour by the previous owner Achyut in 1887, and as such owner claims possession of the land from the defendant, who, he alleges, became his tenant under a lease of even date with the sale-deed. The defendant's case is that his father, and not the plaintiff, was the purchaser from Achyut; that the plaintiff was the savkar who advanced money, and payment of the interest was secured by the contemporaneous lease. The defendant's case has been substantially held to be established on the facts by concurrent findings of two lower Courts, and we are bound by those findings.

The question of law, however, has been raised whether this is a suit in which the real intention of the parties to the lease can be investigated under section 10A of the Dekkhan Agriculturists' Relief Act as being a suit for possession of mortgaged property within the meaning of section 3 (*y*) of that Act. If strictly read, it may be fairly argued that that clause (*y*) should only apply to suits where the plaintiff sues as mortgagee for possession of the mortgaged property. But the Dekkhan Agriculturists' Relief Act must be read as a whole, and as part of the Dekkhan Agriculturists'

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Relief Act we have section 10 A which says: "Whenever it is alleged at any stage of any suit or proceeding to which an agriculturist is a party that any transaction in issue entered into by such agriculturist or the person, if any, through whom he claims was a transaction of such a nature that the rights and liabilities of the parties thereunder are triable wholly or in part under this chapter, the Court shall, &c." Now the illustrations to that section, namely, illustrations (*a*) and (*c*) show that the intention of the Legislature, when this section was enacted, was to apply the provisions to suits by a money-lender suing to enforce either a lease or a sale-deed against an agriculturist though the instrument sued on was really according to the intention of the parties in the nature of a mortgage. That is exactly the case we have here, and therefore, reading clause (*y*) of section 3 by the light of section 10A, we must conclude that the intention of the Legislature was that the nature of the suit under clause (*y*) should not be determined by the frame of the plaint, but by the allegations of the parties which raised the question of mortgage or no mortgage. That being so, we think it cannot be doubted that the question raised upon the lease contemporaneous with the sale-deed of 1887 is a question which must be disposed of under section 10A. It has been so disposed of by the lower Courts, and therefore, the point of law which has been raised must be decided in favour of the respondent. We affirm the decree and dismiss the appeal with costs.

Decree confirmed.

J. G. R.