would refuse the offer of a decree allowing specific performance to the defendant on payment of the balance of his purchase money.

J. G. R.

APPELLATE CIVIL.

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

DHONDI BIN RANOJI PATIL AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* REVAPPA SATAPPA SHINTRE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 13—Mortgage—Several mortgages connected together and involving the same security—One suit for account and redemption—Mode of taking account.

Where there are several mortgages in favour of the same mortgagee, all connected with and involving the same security, the provisions of section 13 of the Dekkhan Agriculturists' Relief Act, 1879, should not be held to isolate the account of each mortgage when there is one suit filed by the mortgagor for the redemption of all the mortgages.

SECOND appeal against the decision of L. C. Crump, District Judge of Belgaum confirming the decree passed by C. G. Kharkar, Subordinate Judge at Chikodi.

The facts of the case are clearly stated in the judgment of His Lordship the Chief Justice.

A. G. Desai, for the appellants.

Nilkant Atmaram, for respondents Nos. 1 and 2.

SCOTT, C. J.:—This was a redemption suit filed subject to the conditions of the Dekkhan Agriculturists' Relief Act for taking accounts under four mortgages and for possession of the property mortgaged. The four mortgages were as follows:—A mortgage with possession for Rs. 500 of all the lands in suit, except Revision Survey No. 58, dated the 8th July 1875; secondly, a mortgage with possession of Revision Survey No. 58, dated the 5th

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March 1878, for Rs. 95 ; third, a mortgage of the property comprised in the mortgage of 1875, namely, eleven Survey numbers for Rs. 500 in cash, dated the 8th August 1882 ; fourth, a mortgage of the eleven Survey numbers, subject of the mortgage of 1875, and Survey No. 58, which was the subject of the mortgage of 1878 for Rs. 700, dated the 28th November 1902.

The learned Subordinate Judge passed a decree declaring that the 1st and 2nd mortgages had been fully satisfied, that Rs. 1,200 were due to the defendants on the 3rd mortgage and Rs. 962-12-0 on the 4th mortgage, and ordered the plaintiff to pay to the defendants or into Court Rs. 2,162-12-0 and costs of suit, and further interest on Rs. 1,043 at six per cent. per annum. The rest of the decree is not material for the purposes of this appeal.

The mortgagor-plaintiff complains of the decree which was affirmed by the District Judge in appeal on the ground that it does not apply towards the discharge of the 3rd and 4th mortgages the amount appearing upon an account taken under section 13 of the Dekkhan Agriculturists' Relief Act to have been received by the mortgagee after satisfaction of the 1st and 2nd mortgages.

It is necessary in considering the appellants' case to have regard to the special provisions of the 3rd and 4th mortgages. The 3rd mortgage states that—

"The land and house had come to the possession of the mortgagee under the mortgage of 8th July 1875, and the mortgagor undertakes to redeem the land and the house by payment not only of the amount due on the mortgage of 1875, but also the amount due on the mortgage of 1882, and states that without paying these rupees, that is the amount of the 3rd mortgage, he has no right on the house and the land."

The 4th mortgage has this provision :

"Dhondi bin Ranoji Patil one of us took from you Rs. 500 on 8th July 1875, and Rs. 95 on 5th March 1878, and passed in writing bonds mortgaging with possession the above mentioned lands in lieu of interest, and he took

Rs. 600 on 8th August 1882 on the security of the above property and gave the mortgage deed registered. Accordingly the above property is in your possession. So the whole of the above property is mortgaged for the amount now taken. So after the agreement in respect of the three previous mortgage deeds is fulfilled you should make all the account of the whole amount regarding this bond, and in lieu of interest for this amount you should enjoy the whole of the said property for fifteen years by leasing out the same to any one you like under any agreement or by cultivating the same at home. On the 1st day of the lunar year in the sixteenth year we shall pay the whole amount and take back this deed with an endorsement for payment in full, and redeem the property."

Thus it is clear that according to the terms of the 3rd and 4th mortgages the mortgagee is to be allowed to remain in possession of the mortgaged land until satisfaction of these last mortgages. It is true, as pointed out by the learned District Judge, that according to the terms of the documents the right to possession as security for the 3rd and 4th mortgages would not arise until the satisfaction of the 1st mortgage in the case of mortgage No. 3, and until the satisfaction of the 1st, 2nd and 3rd mortgages in the case of mortgage No. 4. But that circumstance is of no importance in my opinion when a suit has been filed for redemption under the Dekkhan Agriculturists' Relief Act, for it is inevitable that when the provisions of that Act are applied, some of the contractual provisions of the mortgage deeds must be disregarded in order to apply the statutory provisions of the Dekkhan Agriculturists' Relief Act. The fact, however, remains that these four mortgages are all connected mortgages between the same parties of the same lands, and I find it very difficult to understand how the provisions of section 13 of the Dekkhan Agriculturists' Relief Act should be held to isolate the account of each mortgage where there is one suit filed by a mortgagor for the redemption of four mortgages to the same mortgagees, all connected with and involving the same security. It is a simple matter to take an account under the provisions of section 13 which will embrace all the

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mortgages, that is, all the transactions between parties relating to the land in question, and according to the provisions of the Act the aggregate of the balances appearing due on the account of the principal and interest against a debtor at the date of such account shall be deemed to be the amount due at that date. It does not appear to me that the decree of the lower Courts gives effect to that provision.

It is, however, said that the decree of the lower Courts is in accordance with the authorities and that the case is governed by *Janoji* v. *Janoji*[1] and *Ramchandra Baba Sathe* v. *Janardan Apaji*[2]. But in *Janoji* v. *Janoji*[1] the Court was only dealing with one mortgage, and the question was whether a decree had been rightly passed against a mortgagee for the amount which appeared on the taking of account to have been received by him in excess of the amount due on the mortgage, and it was held that the provisions of the Dekkhan Agriculturists' Relief Act could not operate so as to make the creditor a debtor under section 13. The case of *Ramchandra Baba Sathe* v. *Janardan Apaji*[2] was one wholly dissimilar to the present. It was a case, as stated by Sir Charles Sargent, of perfectly distinct transactions relating to different lands, and the Court found that there were no words in section 13 of the Dekkhan Agriculturists' Relief Act which enabled the Court to treat them as one. Here, however, we have four transactions which are by their own terms intimately connected together. They relate to the same land. It appears, therefore, to me that the case of *Ramchandra Baba Sathe* v. *Janardan Appaji*[2] has no application. On the other hand it is to be observed that Sir Charles Sargent who was the presiding Judge on the Benches which delivered the decisions in *Janoji* v. *Janoji*[1] and *Ramchandra Baba Sathe* v. *Janardan Apaji*[2] gave a judgment in *Babaji* v. *Maniram*[3] in

[1](1882) 7 Bom. 185. [2](1889) 14 Bom. 19.

[3](1894) P. J. p. 37.

which he held that a second mortgage of land already mortgaged, under which second mortgage possession had not been obtained, must be brought into the same account as the 1st mortgage under section 13 of the Act. That appears to be an authority in favour of the appellants and against the conclusion of the lower Court. I would, therefore, set aside the decree of the lower Courts and remand the case for disposal according to the remarks in my judgment. Costs up to date will be reserved to be dealt with by the trial Court according to the result of the account.

BEAMAN, J.:—I entirely concur with the reasoning of the judgment just delivered by the Chief Justice. I would only add, if that is necessary, that it appears to me that this is a case needing to be decided entirely upon its own facts. In so deciding it, I do not wish to be thought to lay down any general principle, much less to call in question a principle so well established as that in *Janoji* v. *Janoji*.[1] It must have been made clear in the judgment just delivered that the ground of our decision is strictly confined to the construction we give to the four mortgages taken together. The 3rd of these is so linked by its terms with the 1st that their conjoint effect is in my opinion virtually to make them one and the same mortgage, and to import the determining characteristic of the 1st, i.e., usufructuary enjoyment, by necessary implication into the second, and so again in the case of the 4th mortgage which relates not only to the land mortgaged under the 1st and 3rd mortgages but also to Revision Survey No. 58, the subject of the second mortgage. It is of course quite easy, as the learned District Judge has done, to insist upon separating these mortgages according to their forms, and so to bring into play the principle upon which he relies established by the case of *Janoji* v. *Janoji*[1]. But whether that

[1](1882) 7 Bom. 185.

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is rightly or wrongly done must, in my opinion, depend upon whether the mortgages upon a true interpretation can be so entirely disconnected. Here I think they could not. There is an onerous condition imposed upon the mortgagor by each of the later mortgages 3 and 4 to fulfil the obligations thus carried over from the 1st into the 3rd and from the 1st, 2nd and 3rd into the 4th, and it appears to me that when an Act intended for the relief of agriculturist debtors has to be applied to such a series of transactions, we ought to look rather to the total effect of the intention of the parties to them than rely upon the inartificial and probably incorrect form of the deeds themselves. That, as I understand it, is the sole ground upon which we are basing our decision here, and it is quite unnecessary to add anything more to the much fuller reasoning contained in the judgment of my Lord the Chief Justice.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

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January 15.

DHURABHAI BHULDAS PATIL (ORIGINAL DEFENDANT), APPELLANT *v.* MOHANLAL MAGANLAL SHAH (ORIGINAL PLAINTIEF), RESPONDENT.*

Indian Registration Act (XVI of 1908), section 17, sub-section 1 (d)—*Lease of land* dar salne mate—*Lease exceeding one year—Registration compulsory.*

It was provided by a lease as follows :—

"We have taken these three fields for cultivation from you yearly (*dar salne mate*) on condition that we are to pay the assessment. We shall go on paying the assessment to Government so long as you give us the fields for cultivation .....If we say anything false or unfair, or if you come to hear of any fraud or deceit on our part or if we practise such fraud or deceit, we will restore possession of the fields to you as soon as you ask us to do so."

* Appeal from Order No. 32 of 1916.