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whereby the mortgagor agreed to pay rent was passed at the same time as the mortgage, and was, therefore, part of the mortgage transaction.

It has been urged that the respondents, who are assignees of the original mortgagee's decree, are in a better position than their assignors. But it seems to me perfectly clear that a mortgagee who has obtained a decree which he cannot execute by sale of the mortgaged property, cannot put his mortgagor in a worse position by assigning his decree to a third party. That question was considered in *Chhagan v. Lakshman*.⁽¹⁾ The learned Judges there referred to a dictum by Tindal C. J. in *Booth v. Bank of England*⁽²⁾: "Whatever is prohibited by law to be done directly, cannot legally be effected by an indirect and circuitous contrivance."

Therefore, on the facts of this case, it seems to me that this claim on which the mortgagee got a decree was really a decree for payment of money in satisfaction of the claim arising out of the mortgage; and, therefore, comes within Order XXXIV, Rule 14, of the Code. The appeal must be allowed with costs throughout.

Decree reversed.

J. G. R.

⁽¹⁾ (1907) 31 Bom. 462.

⁽²⁾ (1840) 7 Cl. & F. 509 at p. 540.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice.

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October 7.

MAHAMAD EBRAHIM ALIAS ALLIMIYA WALAD MAHAMAD SALYA HURJUK (ORIGINAL DEFENDANT No. 2), APPELLANT v. SHAIKH MAHOMAD WALAD SHAIKH ALLI ARAB AND OTHERS (ORIGINAL PLAINTIFFS NOS. 1 TO 7 AND DEFENDANTS NOS. 1 AND 3 TO 6), RESPONDENTS.*

Dekkhan Agriculturists' Relief Act (XVII of 1870), section 15B (1)—Mortgage-account—Redemption—Mortgagee allowed interest—Mortgagee's liability to account for mesne profits from the date of suit till restoration of possession—Practice.

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Plaintiffs sued for accounts and for redemption of a mortgage under the Dekkhan Agriculturists' Relief Act and obtained an instalment decree for redemption in their favour. By the terms of the decree, the plaintiffs were directed to pay a certain amount with interest at 6 per cent. per annum from the date of suit and were held entitled to recover possession of the property mortgaged at once, the mortgagee being liable to account for profits received from the date of suit till restoration of possession to the plaintiffs. The mortgagee having objected to that part of the decree which gave him interest and directed him to account for mesne profits :

Held, overruling the objection, that under section 15B (1) of the Dekkhan Agriculturists' Relief Act, the Court had power to allow interest to the mortgagee and to direct him to account for mesne profits from the date of suit till restoration of possession.

Ramchandra Venkaji Naik v. Kallo Devji Deshpande⁽¹⁾, distinguished.

SECOND appeal against the decision of C. N. Mehta, District Judge, Thana, varying the decree passed by B. D. Sabnis, Subordinate Judge of Mahad.

Suit for accounts and for redemption.

The plaintiffs sued for accounts under Dekkhan Agriculturists' Relief Act and for redemption and possession of the plaint property alleging that one Abdulla valad Abdul Rahiman passed a usufructuary mortgage deed for Rs. 3,920 to defendant No. 1 on the 10th June 1897 ; that plaintiff No. 1 was a purchaser of half of the *lhoti taxim* of 2 annas and 8 pies mortgaged to defendant No. 1 and plaintiffs Nos. 2 to 7 were Abdulla's heirs.

Defendant No. 1 contended that none of the plaintiffs was an agriculturist ; that as a purchaser plaintiff No. 1 could not sue under the Dekkhan Agriculturists' Relief Act ; and that the plaintiffs' sale deed was without consideration.

⁽¹⁾ 1915) 39 Bom, 587.

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Defendant No. 2 who was an assignee and sub-mortgagee from defendant No. 1 contended that the plaintiffs were estopped from going into accounts prior to the assignment in his favour.

The Subordinate Judge found that plaintiff No. 1 was an agriculturist and on taking accounts of the mortgage decreed as follows:—

“ Plaintiff to pay into Court the amount of Rs. 1,808-10-3 only from date of suit, with interest at 6 per cent. per annum on principal due and costs from date of decree in instalments of Rs. 300 a year ... The amount thus paid to be applied towards satisfaction of the mortgage, executed by defendant No. 2 in favour of defendant No. 1. In default of payment of any instalment defendant No. 1 to apply under section 15B (2), Dekkhan Agriculturists' Relief Act. Plaintiffs are to recover possession of the property mortgaged at once, mortgagee being liable to account for profits from the date of suit till restoration of possession to plaintiffs.”

On appeal, the District Judge confirmed the main provisions of the decree varying it only with respect to the amount to be paid into Court by the plaintiffs.

Defendant No. 2 appealed to the High Court.

V. B. Virkar, for the appellant:—I object to the first part of the decree which awards interest at 6 per cent. per annum on the amount found due on the mortgage, though it is in my favour. I further object to the second part of the decree which makes me liable to account for the profits received from the date of suit till restoration of possession to plaintiff. Both these directions are opposed to the entire spirit and scheme of the Dekkhan Agriculturists' Relief Act and also to the cases of *Janoji v. Janoji*⁽¹⁾; *Ramchandra Baba Sathe v. Janardan Apaji*⁽²⁾; and *Ramchandra Venkaji Naik v. Katto Devji Deshpande*⁽³⁾.

The relationship of mortgagor and mortgagee still subsists and the plaintiffs are not entitled to the

(1) (1882) 7 Bom. 185.

(2) (1889) 14 Bom. 19.

(3) (1915) 39 Bom. 587.

profits between the date of the suit and the date of the decree in any event, as the accounts are taken in the special mode prescribed by the Dekkhan Agriculturists' Relief Act contrary to the terms of the mortgage bond.

D. R. Manerikar for *S. S. Patkar*, for the respondents:—The rulings relied on by the other side have no application to the facts of the case. They simply lay down that when the mortgagee is found to have been overpaid at the date of suit on an account taken under section 13 of the Dekkhan Agriculturists' Relief Act, he cannot be ordered to refund the surplus profits that he had received, inasmuch as he was legally entitled to them under the terms of the mortgage bond. The present case is not a case of that description. Here the mortgagee is not only not overpaid but some amount is still found due; and as he has been awarded 6 per cent. per annum interest on the amount found due, it stands good in law and equity that he should be asked to account for subsequent profits. Under the Dekkhan Agriculturists' Relief Act accounts are taken up to the date of suit and as regards the question of appropriation of profits subsequent to the date of suit, full discretion is given to the Court under section 15B (1) of the Act.

MACLEOD, C. J.:—The plaintiffs sued for accounts under the Dekkhan Agriculturists' Relief Act and redemption. Accounts were taken, and by the decree of the lower appellate Court the plaintiffs had to pay into Court the amount of Rs. 1,961-2-0 with interest at 6 per cent. on the principal amount of Rs. 1,895-0-5 from date of suit and costs of various kinds, the whole amount to be paid by instalments of Rs. 300 every year in January 1915. The plaintiffs were held entitled to recover possession of the property mortgaged at once, the mortgagee being liable to account for profits received from the date of suit till restoration

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of possession to the plaintiffs. The mortgagee has objected to that part of the decree which gives him 6 per cent. interest on the one hand, and directs him to account for profits received from the date of suit till restoration of possession to the plaintiffs on the other hand. The argument was based on the decision of this Court in *Ramchandra Venkaji Nailk v. Kallo Devji Deshpande*⁽¹⁾. But there the facts were entirely different, at it was evidently held there that the mortgage had been paid off at the date of suit, and it was held by the Chief Justice that as the accounts were taken under the Dekkhan Agriculturists' Relief Act which are far more favourable to the mortgagor than the mortgage contract, and as nothing was said in the Act as regards mesne profits from the date of suit, the Court was not entitled, although the mortgage was paid off at the date of suit, to order the mortgagee in possession to hand over mesne profits from the date of the suit onwards. But here the mortgage is continuing and the Court under the Dekkhan Agriculturists' Relief Act has taken an account of what was due on the mortgage up to the date of suit, and under section 15B (1) has directed as to what shall happen after the date of suit. The Court has allowed interest to the mortgagee at 6 per cent. and has directed the mortgagee to account for mesne profits. That the Court was entitled to do under the last lines of the sub-section. It is impossible for me to imagine that the learned Judges in the Courts below, who must have passed numbers of decrees of this nature, were not acting in accordance with their usual practice, and if that practice was wrong, it must have been long before brought in appeal in this Court. In my opinion, the decision was correct and the appeal must be dismissed with costs.

Decree confirmed.

J. G. R.

⁽¹⁾ (1915) 39 Bom. 587.