

adopt who desired to avail himself of the right to redeem reserved to him by such a decree as the one before us. All that the Court in such redemption suit is at liberty to do is to construe the decree in the former suit, to ascertain its intention from the expressions contained in it, and to give effect to that intention when so ascertained. In construing the above decree we do not find in it any substantial difference to distinguish it from the decree which the Court had to consider in *Navhu v. Raghu*<sup>(1)</sup> and *Tatya Vithoji v. Bapu Balaji*<sup>(2)</sup>.... We consider that the decrees in those cases were correctly construed."

It seems to me that in the decree in Suit No. 480 of 1881 the right to redeem was reserved, and that the plaintiff is now entitled to sue for redemption. I would, therefore, allow the appeal. The decree must be set aside and the case must be remanded to the trial Court to be heard on the merits. The respondent No. 1 to pay the costs of the appellants up to date.

SHAH, J. :—I agree.

*Decree set aside. Case remanded.*

J. G. R.

<sup>(1)</sup> (1884) 8 Bom. 303.

<sup>(2)</sup> (1883) 7 Bom. 330.

## APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah,*

GIRJABAI KOM NAGAPPA MANJANATHAYYA CHANDAWAR (ORIGINAL PLAINTIFF), APPELLANT *v.* HEMRAJ VRINDAWANDAS AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS\*.

1921.

March 17.

*Land Revenue Code (Bom. Act V of 1879), section 135 (H), clauses 1, 2 and 3—Record of Rights—Omission to annex a certified copy of the entry in the Record of Rights—Appeal—Appellate Court can allow a copy to be annexed.*

\* Second Appeal No. 513 of 1920.

1921.

GIRJABAI  
v.  
HEMRAJ.

An appellate Court has discretion to allow a plaintiff an opportunity of making good the omission to annex a certified copy of the entry in the Record of Rights required by section 135 (H) of the Bombay Land Revenue Code, 1879.

Per SHAH, J. :—"The word 'Court' in sub-section 2 of section 135 (H), Land Revenue Code, includes the appellate Court."

SECOND appeal against the decision of V. M. Ferrers, District Judge of Karwar, reversing the decree passed by R. Baindur, Subordinate Judge of Honawar.

The facts material for the purposes of this report are stated in the judgment.

*Nilkant Atmaram*, for the appellant.

No appearance for the respondents.

MACLEOD, C. J. :—The plaintiff succeeded in the trial Court. In appeal the learned District Judge took the point that as the suit related to land within the meaning of section 135 (H) of the Bombay Land Revenue Code, the plaintiff was bound to annex a certified copy of the entry of the Record of Rights. He had not done so in the lower Court and the omission seems to have escaped the notice of the Judge. The District Judge, therefore, rejected the plaint.

We think that was a wrong method of procedure. If the attention of the plaintiff had been drawn to the defect when the plaint was presented, and the omission to annex a certified copy of the entry in the Record of Rights pointed out, the defect could have been remedied. To dismiss the suit in first appeal owing to this defect appears to be wrong. The appellant ought to have been given an opportunity of annexing to the proceedings a certified copy of the entry of the Record of Rights. Therefore on the plaintiff's doing so, the appeal must be taken on the file and heard on the merits. Costs in the lower court will be costs in the first appeal. No order as to costs here.

SHAH, J.:—I desire to add a word with reference to the point as to whether the appellate Court had discretion in the matter to allow the plaintiff an opportunity of making good the omission to file the necessary copy in the trial Court. Section 135 (H) (2) of the Bombay Land Revenue Code provides that if the plaintiff fails to annex the copy to the plaint for any cause which the Court deems sufficient, he can produce such certified copy within a reasonable time to be fixed by the Court. Where any point relating to the non-production of the requisite certified copy is taken in appeal, it seems to me that the appellate Court has the same power, under this clause as the trial Court. The scheme as also the express provisions of the section suggest that the omission to annex the requisite copy is intended to be made good in the trial Court. But where the omission is not noticed by the Court or by the parties in time, there is no good reason why it should not be allowed to be cured at the stage at which it is noticed. It is true that the express words used in sub-section (3) that the provisions shall apply to an appellate or revisional Court are not to be found in sub-section (2). I am satisfied, however, that the Legislature could not have intended that the result must necessarily be to render all proceedings null and void if the omission is noticed after the trial has ended. In spite of the absence in sub-section (2) of words used in sub-section (3), I think that the word "Court" in sub-section (2) includes the appellate Court.

1921.

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 GIRJABAI  
 v.  
 HEMRAJ.

*Case sent back.*

J. G. R.