

APPELLATE CIVIL.

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

MADHAV BALKRISHNA DESHPANDE (ORIGINAL PLAINTIFF), APPELLANT
v. APPAJI VENKATESH DESHPANDE (ORIGINAL DEFENDANT), RESPOND-
 ENT*.

1921.

January 13.

Consent decree—Dekhan Agriculturists' Relief Act (XVII of 1879), section 15 B—Instalments—Entire alteration of terms of consent decree cannot be allowed.

In a suit for possession of land which the plaintiff alleged had been sold to him but which the defendant contended had been mortgaged, a consent decree was passed directing the defendant to pay to the plaintiff a certain sum for his right as mortgagee within six months from the date of the decree, failing which his right to redeem the mortgage was to cease. The defendant instead of complying with the terms of the decree made an application that he was an agriculturist and that he should be allowed to pay the sum by annual instalments. The lower Courts allowed the instalments on the ground that the terms of the consent decree could be altered under section 15 B of the Dekkhan Agriculturists' Relief Act, 1879.

Held, reversing the order, that the defendant by his application had asked the Court to alter the terms of the consent decree entirely and this could not be done even under section 15 B of the Dekkhan Agriculturists' Relief Act, 1879.

Shivayagappa v. Govindappa (1), relied on.

Supdu Dhodu v. Madhavrao Jivram (2), explained.

SECOND appeal against the decision of T. R. Kotwal Assistant Judge of Sholapur, confirming the order passed by G. G. Nargund, Subordinate Judge at Sangola.

The plaintiff filed Suit No. 142 of 1915 to get possession of the land which had been sold to him for Rs. 200 by the defendants. The defendants contended that they were mortgagors and not vendors. The suit ended in a compromise decree by which defendant No. 1 was to pay to the plaintiff for his right of mortgage a sum of Rs. 425 within six months from the date of the decree, namely, 24th January 1917 with interest at

* Second Appeal No. 506 of 1920.

(1) (1913) 37 Bom. 614.

(2) (1919) 44 Bom. 544.

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eight annas per cent. per month. If the defendant failed to pay the amount and interest to the plaintiff the defendant's right to redeem the land in suit was to cease, and in that case the plaintiff was to get possession of the land in suit by right of ownership.

The defendant did not comply with the terms of the consent-decree, and on the other hand, made an application that he was an agriculturist and annual instalments of Rs. 50 should be granted.

The plaintiff replied that no alteration in the terms of the decree could be made as it was based on a compromise.

The Subordinate Judge granted instalments. His reasons were:—

“There seems to be no authority for holding that a decree, if it is based on a compromise, cannot be altered as provided in section 15 B of the Dekkhan Agriculturists' Relief Act. The section clearly empowers the Court in fit cases, to grant instalments in the course of any proceedings under a decree for redemption, foreclosure or sale. Mr. Joshi, for the plaintiff, refers to 37 Bombay 614 as authority for his proposition. I do not think it is applicable to the present case. It only declares that a compromise not in terms of section 15 B is not illegal. That does not mean that a compromise deprives the Court of its powers, after the compromise merges into a decree by the Court. I hold that instalments can be granted.”

On appeal the Assistant Judge confirmed the order.

The plaintiff appealed to High Court.

P. B. Shingne, for appellant:—There is a consent-decree in this case and to allow instalments is to vary it substantially. This the Court had no power to do. The compromise was valid and binding and cannot be departed from: see *Shivayagappa v. Govindappa*⁽¹⁾.

D. A. Tuljapurkar, for respondent:—The Court has power to grant instalments under the Dekkhan Agriculturists' Relief Act. In ordering payment by instalments,

the Court has not made any substantial variation in respect the terms of the decree: see *Supdu Dhodu v. Madhavrao Jivram*⁽¹⁾.

MACLEOD C. J.—The plaintiff filed this Suit No. 142 of 1915 in order to get possession of the land which had been sold to him for Rs. 200 by the defendants. The defendants contended that they were mortgagors and not vendors. Eventually the suit ended in a compromise decree by which the 1st defendant was to pay to the plaintiff for his right as mortgagee the sum of Rs. 425 within six months from the date of the decree, namely, 24th January 1917 with interest at eight annas per cent. per month. If defendant No. 1 failed to pay the amount and interest to the plaintiff, the defendants' right to redeem the mortgage was to cease, and in that case the plaintiff was to get possession of the land in suit by right of ownership. As the amount stipulated was not paid the plaintiff applied to have the decree made absolute. The defendant made an application that he was an agriculturist and annual instalments of Rs. 50 should be granted. The learned trial Judge thought that there was no authority for holding that a decree, if it was based on a compromise, could not be altered under section 15 B of the Dekkhan Agriculturists' Relief Act. Accordingly he allowed instalments of Rs. 75 a year. In appeal this order was confirmed. But although the learned Judge says "the appellant's main contention is that once there is a consent decree there can be no variation by a Court in any proceedings in suit or in execution", that question has not been seriously considered in the judgment.

In *Supdu Dhodu v. Madhavrao Jivram*⁽¹⁾ we considered in what circumstances the Court could allow an alteration in the terms of a consent-decree. In that

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particular case we did not go further than saying that the Court might relieve against a forfeiture which might have been incurred by a party through not complying with the terms of a consent decree. We certainly never suggested that a party to a consent-decree could apply to the Court for an alteration in its terms. He could only ask the Court to enable him to perform the terms of the decree although the time had passed for performance. In this case the defendant asked the Court by a miscellaneous application to alter the terms of the decree entirely.

In *Shivayagappa v. Govindappa* ⁽¹⁾ it was held that a compromise in a suit which came under the Dekkhan Agriculturists' Relief Act was not bad in law because it was made without compliance with the special provisions of section 15 B of that Act. In that case an attempt was made to execute the compromise decree, but the defendant urged that a compromise decree was illegal. The Chief Justice in delivering the judgment said : "There is nothing to show that the Legislature intended that the provisions of that section should be applied by analogy wherever a compromise is entered into, which is to be recorded by the Court and to form the basis of a consent decree. As Mr. Justice West observed in *Gangadhar Sakharam v. Mahadu Santaji* ⁽²⁾, it is a general principle 'that exceptional provisions are not to receive a development to all their logical consequences contrary to the general principles of the law.' Here we are asked to extend by analogy the provisions of a special section contrary to the general principles expressed in Order XXIII Rule 3. A compromise which is made by parties who are *sui juris* should be given effect to. We do not think that there is anything unlawful in the compromise or contrary to public policy."

(1) (1913) 37 Bom. 614 at p. 620.

(2) (1883) 8 Bom. 20.

Therefore this application by the defendant to the Court to alter the terms of the consent decree should not have been acceded to. At the most the Court could have allowed the defendant to pay the decretal amount although the decretal period had expired. The decree of the lower appellate Court must be set aside and the plaintiff's claim allowed as prayed. The appellant will get his costs throughout from the respondent.

Decree reversed

J. G. R.

CRIMINAL REVISION.

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

In re HOLIBASAPPA PAREPPA SANGOLI*.

Practice and Procedure—Magistrate—Judgment—Remarks against a person who is neither party nor witness.

1920.

December 1.

It is very undesirable that a Judge or Magistrate should make remarks which are prejudicial to the character of a person who is neither a party nor a witness in the proceeding before him, and who has therefore no opportunity of giving an explanation or defending himself against the remarks made by the Court.

THIS was an application to have certain remarks expunged from the judgment passed by D. B. Nesarikar, Sub-Divisional Magistrate, First Class, at Belgaum.

One Mahadevappa filed a complaint against his mistress charging her with theft of ornaments.

The trying Magistrate acquitted her of the offence; but in doing so, passed, in his judgment, severe strictures against the applicant, who was neither a party to nor a witness in the proceeding.

The applicant, thereupon, applied to have the unfavourable remarks expunged from the judgment.

Jayalcar, with G. P. Murdeshwar, for the applicant.

* Criminal Application No. 373 of 1920.