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within the meaning of this rule—for I do not think it is necessary to do so here—I find it enough to say upon this point that if a Court, applying its mind to the facts before it, is of opinion that those facts constitute sufficient grounds, then I find it impossible to hold, even though the Court might be mistaken in its view, that the Court had no jurisdiction to make an order within the terms of Order XXIII, Rule 1.

On these grounds, therefore, I concur in the judgment pronounced and in the order proposed.

Appeal allowed.

R. R.

APPELLATE CIVIL.

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

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June 24.

GURUNATH KESHAV KALKUNDRI (HEIR NO. 2 OF THE ORIGINAL DEFENDANT 1), APPELLANT v. SADASHIV BALKRISHNA DESHPANDE AND OTHERS (ORIGINAL PLAINTIFFS NOS. 1 AND 2 AND HEIR NO. 4 OF DEFENDANT NO.1), RESPONDENTS^o AND BALARAM ALIAS ANANT GOPAL KALKUNDRI (HEIR NO. 4 OF ORIGINAL DEFENDANT NO. 1), APPELLANT v. SADASHIV BALKRISHNA DESHPANDE AND ANOTHER (ORIGINAL PLAINTIFFS NOS. 1 AND 2), RESPONDENTS^o.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 13—Accounts—Series of transactions—Second transaction entered into before the first transaction had come to an end—Accounts could be taken as if the transactions were one entire transaction.

In 1885 there was a mortgage between the parties under which the mortgagee was to remain in possession of the mortgaged property and to receive profits in lieu of interest on a part of the principal amount and the remaining amount was to carry interest.

In 1891 and 1895 fresh advances were made on bonds secured on the same property. The lower Courts found that when the last advance of 1895 was made the original mortgage transaction had not come to an end but was still

^o Second Appeals Nos. 1017 and 1021 of 1916.

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open between the parties. Accordingly an account of all the transactions under the Dekkhan Agriculturists' Relief Act was taken and it was found that nothing was due to the mortgagee. In second appeal it was contended that the accounts were taken according to a wrong method :

Held, that the series of transactions between the parties were exactly the kind of series of transactions contemplated by section 13 of the Dekkhan Agriculturists' Relief Act and accounts could be taken of the whole series as if they were one entire transaction.

Vishnu Keshav Joshi v. Satwaji valad Tulsaji Navale⁽¹⁾, distinguished.

SECOND appeal against the decision of A. Montgomerie, confirming the decree passed by B. N. Hublikar, Joint Subordinate Judge at Belgaum.

Suit for accounts and for redemption.

In 1885, the plaintiffs mortgaged the property in suit with possession to defendants for Rs. 3,000. The mortgage deed stipulated that the mortgagee was to remain in possession and to receive profits in lieu of interest on Rs. 2,700 out of Rs. 3,000, the remaining Rs. 300 was to carry interest at 6 per cent.

In 1891, the plaintiffs passed a bond for Rs. 700 secured on the same property bearing interest at 15 per cent. to be repaid in one year, or if not repaid within one year, then at the time of paying off the earlier bond.

In 1895, the plaintiff secured another advance of Rs. 200 on a third bond in terms similar to those of the bond in 1891.

In 1909, the plaintiffs sued for accounts of all the mortgage bonds and to recover possession of the property free of the mortgage encumbrance.

The Subordinate Judge took account under the provisions of section 13 of the Dekkhan Agriculturists' Relief Act, on the footing that there was a series of

⁽¹⁾ (1897) P. J. 87.

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transactions between the parties, which together amounted to one set of dealings and found that there was nothing due to the mortgagee-defendants. He, therefore, decreed that the defendants do deliver possession of the suit property to the plaintiffs.

On appeal, the District Judge confirmed the decree.

The heirs of original defendant No. 1 appealed to the High Court.

S. Y. Abhyankar, for the appellant.

A. G. Desai, for the respondent No. 1.

D. R. Manerikar for *S. S. Patkar*, for respondent No. 3 in Second Appeal No. 1017 of 1916.

D. R. Manerikar for *S. S. Patkar*, for the appellant.

A. G. Desai, for respondent No. 1 in Second Appeal No. 1021 of 1916.

MACLEOD, C. J. :—In this case there was a mortgage in 1885 for Rs. 3,000. It was stated in the mortgage deed that the mortgagee should be in possession and receive the profits in lieu of interest on Rs. 2,700 out of Rs. 3,000, leaving the balance of Rs. 300 to carry interest. In 1891 a fresh advance of Rs. 700 was made on a bond at 15 per cent. per annum interest. In the same way in 1895 another advance of Rs. 200 was obtained on a third bond. The learned Judge in the trial Court took an account under the provisions of the Dekkhan Agriculturists' Relief Act and found that nothing was due. He found as a fact that when the second advance of Rs. 700 was made the previous loan had not been paid off, and so again when the third advance of Rs. 200 was made in 1895, the transaction was still open between the parties. Therefore he took an account under the provisions of section 13 on the

footing that there was a series of transactions between the parties, which together amounted to one set of dealings of which an account should be taken.

In appeal this decision was confirmed with a slight variation which did not affect the result, as the learned appellate Judge found that the mortgage had been paid off.

In second appeal it is urged that the accounts have been taken according to a wrong method. We have been referred to the case of *Vishnu Keshav Joshi v. Satwaji valad Tulsaji Navale*⁽¹⁾. But in that case it was expressly found that before the second transaction was entered into, the first transaction had been completed. The money had been paid back. Therefore there was not a series of transactions which could be connected together. The second transaction followed after the first when the first transaction had come to an end. That makes all the difference in our opinion. In this case the series of transactions between the parties was exactly the kind of series of transactions contemplated by section 13 of the Act, and it was intended that an account should be taken of the whole series of transactions between the parties as if they were one entire transaction. Therefore we confirm the decree and dismiss the appeals with costs.

Decree confirmed.

J. G. R.

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