

APPELLATE CIVIL.

1923.

January 12.

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

RANGAPPA KONDAPPA KORPE (ORIGINAL PLAINTIFF), APPELLANT *v.*
 VITHU KRISHNAJI WAIKAR (ORIGINAL DEFENDANT), RESPONDENT^o.

*Limitation—Mortgagee in possession—Claim on mortgage barred by time—
 Mortgagee can still retain possession until he is paid in full.*

The defendant borrowed money from the plaintiff on three simple mortgages passed in 1893, 1902 and 1903. In 1904, he passed a possessory mortgage to the plaintiff and executed a rent note for the property. The plaintiff sued in 1917 to eject the defendant. The Court, treating the suit as one for redemption under section 15C of the Dekkhan Agriculturists' Relief Act, held that the first three simple mortgages were barred by time, and decreed redemption on payment of what was found due on the possessory mortgage. On appeal:—

Held, that the plaintiff, having obtained possession of the property mortgaged to him, was entitled to retain his possession till his claim under all the mortgages was satisfied.

SECOND appeal from the decision of G. D. French, District Judge of Poona, confirming the decree passed by M. A. Bhawe, Subordinate Judge at Khed.

Suit in ejectment.

The defendant borrowed money from the plaintiff on three simple mortgage bonds passed in 1893, 1902 and 1903. In 1904 he executed a possessory mortgage of the property; but executed a rent note for it the same day.

In 1917, the plaintiff sued to eject the defendant under the rent note. The trial Court treated the suit as one falling under section 3, clause (y) of the Dekkhan Agriculturists' Relief Act, and converted it, under section 15C of the Act, into a suit for redemption. The Court further held that the amounts due under the three simple mortgages were barred by limitation

and that redemption should be allowed on payment of what was found due under the possessory mortgage. The District Judge confirmed this decree on appeal.

The plaintiff appealed to the High Court.

P. B. Shingne, for the appellant.

K. V. Joshi, for respondent No. 6.

MACLEOD, C. J. :—This is a suit filed by the plaintiff to eject the defendant, and recover possession of the plaint property, the defendant being in possession under a rent-note of the 1st June 1904 executed in plaintiff's favour on an annual rent of Rs. 18-12-0. The plaintiff is a mortgagee, the defendant having executed four mortgages with regard to the plaint property. They are set out at page 6 of the plaint. The first three are simple mortgages and the fourth one was a mortgage with possession; and this is a suit really by a mortgagee in possession against his tenant. The Courts, however, have dealt with the case as if it was a suit filed under section 2(y) of the Dekkhan Agriculturists' Relief Act, and have entertained a claim by the defendant to be allowed to redeem. The defendant then claimed that he was entitled to redeem the mortgaged property on paying off the mortgage money under Exhibit 23 only, and that, as the plaintiff-mortgagee could not sue to recover on the simple mortgages, the defendant was entitled to redeem without paying those amounts. The defendant obtained a decree on those terms in the trial Court, and again in the Appeal Court. But we are of opinion that both those decisions were wrong. Once the mortgagee got into possession of the property mortgaged to him, then the property was security for his debt. He was entitled to remain in possession, though as a matter of fact if he endeavoured to recover the mortgage money by suit he might find himself barred by the statute of limitations. If this decision

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were to stand, it would follow that the mortgagee in possession though he could not sue for the mortgage debt would still be liable to be redeemed without receiving any of the mortgage money. We think, therefore, that the decree must be set aside, and the case remanded to the trial Court to take an account of what is due to the plaintiff under the mortgages, Exhibits 21, 22, and 23. As the mortgage, Exhibit 33, refers to other properties, the plaintiff's pleader does not ask an account to be taken of the money due thereunder. The plaintiff is entitled to his costs throughout.

Decree set aside.

R. R.

APPELLATE CIVIL.

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January 23,

THE BROACH CITY MUNICIPALITY (ORIGINAL OPPONENT), APPLICANT
v. GULAM RASUL HAJI BANUBHAI (ORIGINAL APPLICANT),
OPPONENT^s.

*by District Municipal Act (Bombay Act III of 1901), section 160†—
Acquisition of land—District Municipality—Compensation amount fixed
by District Court—Execution of order.*

An order passed by the District Court under the provisions of section 160, clause (3) of the Bombay District Municipal Act, 1901, can itself be executed as a decree.

THIS was an application under the extraordinary jurisdiction from an order passed by C. N. Mehta, District Judge of Broach.

Civil Extraordinary Application No. 198 of 1922.

† The section runs as follows :—

160. (1) If a dispute arises with respect to compensation or damages which are by this Act directed to be paid, the amount, and if necessary the apportionment of the same, shall be ascertained and determined by a Panchayat of five persons, of whom two shall be appointed by the Municipality, two by the party to whom or from whom such compensation or damages may be