

from dealing in any way with the suit property. We think it is clear in such a case that a defendant would be entitled to come to Court and ask for the payment to him of the consideration money for the purchase on his tendering a sale-deed. We think the order made by the Judge in the Court below was a perfectly correct order and that the defendants came within the definition of decree-holder in section 2 (3), Civil Procedure Code. If the plaintiff in a suit for specific performance, after having obtained a decree, discovers or is apprehensive that the defendant cannot give him a good title, then it seems to me his proper course is to apply to the Court that passed the decree for a review, or in the alternative it may be open to him to file another suit against the defendant to set aside the previous proceedings. The appeal must be dismissed with costs.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

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

THE TALUKDARI SETTLEMENT OFFICER, THE COLLECTOR OF THE DISTRICT OF KAIRA AS MANAGER OF THE ESTATE OF NAHARSINGJI MEHRAMANSINGJI, THE THAKORSAHEB OF DEHVAN (ORIGINAL PLAINTIFF), APPELLANT *v.* AKUJI ABHRAM MUSE, AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

Gujarat Talukdars' Act (Bom. Act VI of 1888 as amended by Bom. Act II of 1905), section 29B—Mortgage—Knowledge of the Talukdari Officer—Subsequent notification to register claims—Failure to notify claim, effect of—Misjoinder of causes of action.

The property in suit was a Talukdari estate. In 1859, it was mortgaged with possession by the then Talukdar to the predecessor-in-title of defendants Nos. 1 to 7. Between 1895 and 1906, the defendants Nos. 1 to 7, alleging

* First Appeal No. 188 of 1920.

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that they were owners, executed several mortgages in favour of defendants Nos. 8 to 10. From a date prior to 1895, the estate had been under the management of the Talukdari Settlement Officer. In 1905, this officer issued a notification under section 29B of the Gujarat Talukdars' Act. None of the defendants, however, notified their claims as required by the notice. The Talukdari Officer thereupon sued to recover possession from the defendants. The lower Court held that the suit was bad for misjoinder of causes of action against defendants Nos. 8 to 10 and further that it was not necessary for the defendants to notify their claim inasmuch as the Talukdari Officer knew of the mortgage of 1859 having in fact, in 1899, called for a copy of the mortgage deed. On appeal to the High Court,

Held, that the suit was not bad for misjoinder of causes of action,

Held, further, that although the plaintiff had knowledge of the original mortgage deed of 1859, those who were desirous of claiming under that deed were bound to give notice in writing of their claim after the notification under section 29B was issued and the defendants having failed to do so, the plaintiff was entitled to succeed.

FIRST appeal against the decision of Motiram S. Advani, District Judge, Broach.

Suit to recover possession.

The property in suit which consisted of Survey No. 1040 measuring 5 acres 10 gunthas and Survey No. 1069 measuring 12 acres 17 gunthas was a part of the Talukdari estate of Naharsingji, Mehramansingji, Thakor of Dehvan. It was mortgaged with possession in the year 1859 to the predecessors-in-title of defendants Nos. 1 to 7. The estate had been managed by the Talukdari Settlement Officer since Naharsingji's father's time.

Between 1895 and 1906, the defendants Nos. 1 to 7 executed various mortgage deeds in favour of defendants Nos. 8 to 10, under which these defendants held 16 acres and 24½ gunthas, while the remaining one acre and 12½ gunthas remained in the possession of defendant No. 2.

On the 12th October 1905, the Talukdari Settlement Officer published a notice under section 29B of Gujarat

Talukdars' Act, calling upon the claimants to submit their claims against Naharsingji or his property within six months from the publication of the said notice.

The defendants Nos. 1 to 10 did not submit their claims.

The Talukdari Settlement Officer thereupon served the defendants with a notice to vacate under section 202 of the Bombay Land Revenue Code and as they failed to vacate, filed the suit in 1917.

The defendants contended *inter alia* that they had no knowledge of the mortgage of 1859, that their claim to the property was not affected by the notice given by the Talukdari Settlement Officer; that the several causes of action were wrongly joined; and that the right was lost by adverse possession.

The District Judge held that the suit was bad against defendants Nos. 8 to 10 for misjoinder of causes of action as defendants Nos. 1 to 7 gave themselves out as owners of the lands and executed mortgages in favour of these defendants. He also held that the suit was barred as against the said defendants under Article 134 of the Limitation Act. On the question of notice, he found that section 29B of the Gujarat Talukdars' Act was not applicable.

The plaintiff appealed to the High Court.

G. N. Thakor, for the appellant.

N. K. Mehta, for respondents Nos. 1, 2, 3, 6, 7 and 10.

Dhirajlal Thakor with *R. J. Thakor*, for respondents Nos. 8 and 9.

MACLEOD, C. J. :—The suit was filed by the plaintiff as Talukdari Settlement Officer and Manager of the estate of Naharsingji Mehramansingji, the Thakorsahab of Dehvan, to get possession of certain survey numbers

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alleged to belong to the Talukdari estate. The suit property had been mortgaged in 1859 by the then Talukdar to the predecessors-in-title of defendants Nos. 1 to 7. It seems that they partitioned amongst themselves the suit property, and dealt with the suit property as if they were owners, executing various mortgage deeds between 1895 and 1906, which resulted

16 acres and $24\frac{1}{2}$ gunthas becoming mortgaged to defendants Nos. 8, 9 and 10, 1 acre and $12\frac{1}{2}$ gunthas of the suit property remaining in possession of the 2nd defendant. The Judge found that defendants Nos. 8 to 10 had been in possession for more than twelve years after the lands had been mortgaged to them, although there seems to be an error with regard to the mortgage of 1906 which was less than twelve years before suit. As the defendants Nos. 1 to 7, mortgagees of the Talukdars, represented that they were owners, defendants Nos. 8 to 10 were entitled to rely upon that representation for the purposes of Article 134 of the 1st Schedule to the Indian Limitation Act. The rights of defendants Nos. 8 to 10 to whom defendants Nos. 1 to 7 executed mortgages would be established after twelve years as against the Talukdar, and if he wished to redeem and recover possession of the properties, he would have to pay defendants Nos. 8 to 10 the amount due on the mortgages with regard to which they had been in possession for more than twelve years. The Judge found that the plaintiff's claim to get possession from defendants Nos. 8 to 10 was bad for misjoinder of causes of action, and dismissed the suit with regard to those defendants. The only result of that would be that the plaintiff will have to file another suit against those defendants to recover possession. But in our opinion the Judge's decision was wrong. There is no reason why the plaintiff should not join defendants Nos. 8 to 10 in a suit against defendants Nos. 1 to 7.

As he was endeavouring to get possession of all the suit properties, and the only result of defendants Nos. 8 to 10 establishing their claims under Article 134, would be that the plaintiff in order to get possession of the lands mortgaged to them, would have to pay the amount due on the mortgages executed by defendants Nos. 1 to 7, there is no reason why all those questions should not have been decided in one suit.

Then the Judge has allowed the plaintiff to redeem the plaint lands remaining in possession of defendant No. 2 on payment of Rs. 95 within six months.

The plaintiff appeals against that part of the decree on the ground that he issued notice under section 29B of the Gujarat Talukdars' Act, and no answer to the notice was received within six months allowed by that section. The Judge says:—

“In so far as defendants Nos. 1 to 7 are concerned it is clear that during the life time of the father of the plaintiff the estate was in the hands of the Talukdari Settlement Officer. He had sent for the original mortgage deed and taken a copy of the deed. He became aware of the claim. It was not necessary for defendants Nos. 1 to 7 to have put in a claim again. Considering these circumstances I am of opinion that the section is not applicable to the facts of the present case.”

That decision disregards the decision of this Court in *Shankerbhai v. Raisingji*⁽¹⁾ in which the plaintiff resisted the right of the Talukdari Settlement Officer to serve him with a notice under sections 202 and 79A of the Land Revenue Code on the ground that he was a mortgagee, and had represented to the Talukdari Settlement Officer that he was a mortgagee before section 29B had been added to Bombay Act VI of 1888, but the Court held that the representation by the plaintiff that he was a mortgagee was not a notice complying with the provisions of section 29B, which was not in existence at that time, and that, as he had

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not answered the notice issued under section 29B of the later date, his claim could not be considered.

We may also refer to *Purushottam v. Rajbai*⁽¹⁾, where it was decided that although a decree had been passed against a Talukdar, which was being executed before section 29B was enacted, still notice of the claim was necessary after the notification under section 29B had been issued; and the only question was whether the two written applications for the execution of the decree made after the notification were sufficient notices in writing of the plaintiff's claim. It must be inferred from that judgment that notices were required after the notification in spite of the fact that a decree passed against the Talukdar was being executed.

Therefore, it would appear that, although the plaintiff had knowledge of the original mortgage deed of 1859, those who were desirous of claiming under the deed were bound to give notice in writing of their claim after the notification under section 29B was issued.

With regard to defendant No. 2, no such notice was given by him, and, therefore, the plaintiff was entitled to possession of that part of the suit property which is in his possession without payment.

With regard to that portion of the suit property which is in possession of defendants Nos. 8 to 10, has been argued that they had no knowledge that the property was Talukdari property, and that, therefore, they could not have been expected to give notice of their claim when the notification was issued under section 29B. But section 29B(2) especially provides for such a case "where the managing officer is satisfied that any

(1) (1909) 34 Bom. 142.

claimant was unable to comply with the notice published under sub-section (1), he may allow his claim to be submitted at any time after the date of expiry of the period fixed therein; but any such claim shall, notwithstanding any law, contract, decree, or award to the contrary, cease to carry interest from the date of the expiry of such period until submission," and even if the managing officer is not satisfied that the claimant was unable to comply with the notice, and decides that his claim has been duly discharged, it would be still open for him to claim in a suit to ask for a decision of the Court that he was unable to comply with the notice, and if the Court is satisfied that the claimant had sufficient reason for not being aware that the property, against which he had a claim, was Talukdari property, then we have no doubt that the Court would allow the claim. But in this case defendants Nos. 8 to 10 were served with notice so far back as 1912. They were bound then to give notice of their claim against the property to the plaintiff, and to ask him to give a decision under section 29B (2). It is far too late now to ask this Court in appeal to hold that they were unable to comply with the notice published under sub-section (1) in 1905.

The result must be that the appeal succeeds, and that the plaintiff is entitled to recover the suit property from the defendants in possession with costs throughout.

Decree reversed.

J. G. R.

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