APPELLATE CIVIL.

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

1922. *February* 17.

BAI KARIMABIBI DAUDBHAI (ORIGINAL PLAINTIFF), APPELLANT *v.* ABDEREHMAN SAYAD BANU AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS*.

Civil Procedure Code (Act V of 1908), section 2 (3)—Decree-holder, meaning of—Decree for specific performance—Defendant can execute the decree.

The defendants having agreed to sell their property to the plaintiff, the plaintiff obtained a decree for specific performance of the contract, and deposited the consideration money in Court. About that time, the defendants were sued by a third person who obtained a decree ordering the defendants to give possession of the property to him. The plaintiff thereafter having taken no steps to execute the decree, the defendants applied for execution. The plaintiff raised the objection that the defendants were not decree-holders as defined in section 2 (3) of the Civil Procedure Code, 1908 :—

Held, that the defendants were decree-holders of a decree for specific performance of a contract within the meaning of section 2 (3) of the Civil Procedure Code, 1908 ; and that such a decree was capable of being executed by either party.

FIRST appeal from the decision of T. R. Kotwal, First Class Subordinate Judge at Surat.

Execution proceedings.

The defendants agreed to sell their property to the plaintiff. The plaintiff sued the defendants for specific performance of the agreement, and obtained a decree which entitled her to have a deed of conveyance and possession of property on her depositing Rs. 6,449 into Court. The deposit was duly made.

In another suit, one Ismail obtained a decree against the defendants which entitled him to recover possession of the property on paying Rs. 4,000 to defendants.

The plaintiff did not execute the decree. The defendants then moved the Court to execute the decree,

* First Appeal No. 223 of 1921.

alleging that they were willing to execute the sale-deed and hand over possession of the property to the plaintiff, on receiving the amount deposited in Court. The Court made the order.

The plaintiff appealed to the High Court.

G. N. Thakor, for the appellant:—The defendants cannot be treated as decree-holders: they cannot execute the decree. Section 2 (3) of the Civil Procedure Code does not apply. Nor can the plaintiff who has really obtained a decree in his favour be regarded as a judgment-debtor. The defendants cannot be allowed to take away money from the Court before they are in a position to give a good title to the plaintiff.

M. B. Dave, for the respondent, was not called upon.

MACLEOD, C. J.:—The plaintiff in Suit No. 264 of 1919 in the First Class Subordinate Judge's Court at Surat obtained a decree for specific performance of a contract to sell immoveable property. The following order was passed:—

"It is ordered that defendant No. 1 do execute to the plaintiff a sale-deed in respect of the property, the subject matter in suit for Rs. 7,200. In default on his part, the plaintiff do apply for execution of the same. The plaintiff do deposit in the Court Rs. 6,449 being the balance of the purchase money due at the foot of the agreement, the subject-matter of this suit. On his doing so, the plaintiff do take possession of the house, the subject-matter of this suit, after the execution of the necessary sale-deed. But he is not to take possession before that. The defendant No. 2 do take Rs. 4,741-8-0 out of the said Rs. 6,449, and he do give over the balance to defendant No. 1. The documents lying in Court of defendant No. 2 (three mortgage deeds) be given to the plaintiff. The plaintiff do also take the agreement given in writing to defendant No. 2 by the plaintiff and defendant No. 1."

The second defendant was the mortgagee from the first defendant. It also appears that the same property was the subject matter of Civil Suit No. 217 of 1919 filed

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by one Ismail against the present defendants, the present plaintiff not being a party, and it appears that in that suit, after the decree in Suit No. 264 of 1919 had been passed, Ismail got a decree directing the defendants to give him possession of the suit property on Ismail's paying them Rs. 4,000.

In consequence of the decree in Suit No. 217 of 1919, the plaintiff was not anxious to get a sale-deed from the defendants. The defendants were anxious to get the money which had been deposited in Court, and were perfectly willing to give the plaintiff a sale-deed. The defendants consequently took out Darkhast No. 51 of 1921. The plaintiff opposed any action being taken on the Darkhast on the ground that the defendants were not decree-holders as defined in section 2 (3) of the Civil Procedure Code, so that they had no right to file the Darkhast. This contention was over-ruled by the First Class Subordinate Judge who directed that the plaintiff should get a sale-deed which the defendants were willing to pass, and should get possession. The defendants should get the money as decreed in their favour on passing the deed and giving possession. If the plaintiff refused to take the deed and possession within a reasonable time, defendants were to be at liberty to apply to the Court for such orders as they were entitled to.

Now it seems to me on general principles, leaving aside altogether the dealings between the defendants and other parties, that the decree for specific performance was capable of being executed by the defendants as well as by the plaintiff. If this were not so, it would follow that if a plaintiff who has obtained a decree for specific performance, refuses to take the sale-deed and pay the consideration money, the defendant is left with no remedy whatever, while, owing to the decree passed against him, he would still be debarred

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.

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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.