It is, therefore, clear that the decision of the Taxing Officer was wrong, and the appellant cannot, by saying that he is asking for a declaration that the decree passed against the first defendant is binding against the other defendants, get rid of the fact that he is asking this Court to pass a money decree against the other defendants. The appeal, therefore, has been wrongly valued, and it may be noted that when the First appeal was filed to the District Court, it was not valued on this basis, but was valued on the original claim. The appellant, therefore, must repay the Court-fee which was refunded. A week's time is allowed for making this payment.

Order accordingly.

R. R.

APPELLATE CIVIL.

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

HOLLEPPA KALLAPPA MAYAPPANAVAR (ORIGINAL DEFENDANT No. 4), APPELLANT *v.* IRAPPA GIRI MALLAPPA BADIGER AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

1922.

January 16.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 10 A—Sale or mortgage—Oral evidence—Scope of the section.

The provisions of section 10 A of the Dekkhan Agriculturists' Relief Act are not limited to suits of the description mentioned in clauses (*w*), (*y*) or (*z*) of section 3 of the Act, but apply to all suits to which an agriculturist is a party and in which there is in issue some transaction entered into by such agriculturist or the person, if any, through whom he claims, which are of such a nature that the rights and liabilities of the parties thereunder are triable wholly or in part under Chapter III of the Act.

SECOND appeal from the decision of D. A. Idgunji, Assistant Judge of Belgaum, confirming the decree passed by R. G. Shirali, Subordinate Judge at Athni.

*Second Appeal No. 741 of 1920.

1922.

HOLLEPPA KALLAPPA v. IRAPPA GIRI MALLAPPA.

Suit for partition.

The plaintiff sued for partition of certain lands. Defendants Nos. 1 to 3 were his *bhaubandhs*. Defendants Nos. 4 to 7 were alienees of portions of the properties. These latter defendants did not appear. In the suit a decree for partition was passed.

Defendant No. 4, who was the alienee of one of the properties so partitioned, applied to have the *ex parte* decree set aside. The decree was set aside and the suit reopened with respect to the land.

The land in question was transferred to defendant No. 4 by the plaintiff and the father of defendants Nos. 1 to 3 in 1913 for Rs. 3,000. The deed was in the form of a sale-deed. There was a contemporaneous oral agreement that if the vendors returned Rs. 3,000 with interest in six years' time, the property was to be reconveyed to the vendors.

At the retrial of the suit, the plaintiff sought to prove the aforesaid oral agreement in order to establish that the transaction was in reality a mortgage.

The lower Courts allowed the oral agreement to be proved under section 10A of the Dekkhan Agriculturists' Relief Act; and held that the transaction relied on by defendant No. 4 was a mortgage. The Courts, therefore, restored the original decree for partition with respect to the land in question.

Defendant No. 4 appealed to the High Court.

A. G. Desai, for the appellant.

H. B. Gumaste, for respondents Nos. 1 and 2.

MACLEOD, C. J.:—The plaintiff filed this suit for partition of certain lands and houses and moveables at Shirhatti in Athni Taluka. Defendants Nos. 1 to 3 were

his *bhaubands*. The other defendants were alleged to be alienees of some of the lands. Defendant No. 4 did not appear at the trial. The suit was decreed. Thereafter defendant No. 4 got the decree set aside to the extent of the land Survey No. 156, which is said to have been transferred to him by the sale deed, Exhibit 115, in 1913. The plaintiff alleged that the transfer was really a mortgage, and that, therefore, the land was still owned by his family and was partible.

In the trial Court the issue was whether the sale relied on by the defendant No. 4 was really a mortgage? It does not seem to have been suggested there that that issue could not be tried, or that section 10 A of the Dekkhan Agriculturists' Relief Act was not applicable to the case. But in First appeal that point was taken. The learned Judge said :

"The only question is whether the words 'whenever it is urged at any stage of any suit or proceeding' in section 10 A are to be so construed as to confine the meaning of the words 'any suit or proceeding' specifically to a suit of the description mentioned in section 3, clauses (*w*), (*y*) and (*z*). Section 12 and section 13 are in terms restricted to those suits, but section 10 A enacted in the same chapter provides for 'any suit or proceeding'. All that is necessary is that the transaction in issue should be of such a nature as to make it amenable to the operation of sections 12 and 13. I see no reason for cutting down the scope of the words 'any suit or proceeding' in section 10 A, and limiting it to the four corners of the suits provided for in section 12. Section 10 A was, it would appear, deliberately given a wider scope. The words 'any suit' have, therefore, to be read in their ordinary sense."

It seems to me that when the provisions of section 12 were specifically limited to any suit of the description mentioned in section 3, clauses (*w*), (*y*) or (*z*), if it had been intended to limit the provisions of section 10A to suits of that description, similar words would have been used instead of the words 'in any suit or proceeding'. But for the section to be applicable it is only necessary that an agriculturist must be a party

1922.

HOLLEPPA KALLAPPA v. IRAPPA GIRI MALLAPPA.

to the suit, and that some transaction shall be in issue entered into by such agriculturist or the person, if any, through whom he claims, which shall be of such a nature that the rights and liabilities of the parties thereunder are triable wholly or in part under Chapter III of the Act. The illustration (*a*) makes this clear :—If a landlord sues for possession of land leased by him to an agriculturist, such suit is not one of the suits referred to in section 3, clauses (*w*), (*y*) and (*z*). In a suit on a lease, if the defendant alleges that he mortgaged the land with possession to the lessor, who is entitled to its possession only as such mortgagee and not as owner, and asks that he may be allowed to redeem the mortgage without being ejected, then there is a transaction in issue such as is referred to in section 10A, and the Court may admit evidence on this allegation, and, if satisfied that it is correct, may decline to eject the defendant as tenant, and allow the suit to be converted into one for redemption of the mortgaged property. Therefore the fact that there is some such transaction in issue in a suit to which an agriculturist is a party renders section 10A applicable whatever the nature of the suit may be. Now it seems to me to be clear that this was a suit for partition which was resisted by the 4th defendant on the ground that a part of the property had been sold to him, so the Court was entitled to take evidence with regard to the real nature of the transaction, and decide whether or not, the transaction was a sale as contended for by the 4th defendant, or a mortgage as alleged by the plaintiff, and, having found that it was not a sale but a mortgage, then the Court was entitled to treat the case as against the 4th defendant as a suit for redemption. The Court apparently did not take that course but left the mortgagee-appellant to his remedy by another suit. As the parties are agreeable now that we should pass orders as

if the plaintiff was asking for a redemption of the mortgage from the 4th defendant, while dismissing the appeal by the 4th defendant against the decree for partition, we direct that the suit should be remanded to the trial Court for taking an account under section 15B of the Dekkhan Agriculturists' Relief Act of the mortgage, Exhibit 115, of the year 1913. We dismiss the appeal with costs and remand the suit to the trial Court to pass a redemption decree. Costs in remand to be costs in the cause.

COYAJEE, J.:—I agree. In this Second appeal it is urged on behalf of the appellant that the lower Courts erred in law in inquiring into the nature and character of the transaction in question. The contention is that the operation of section 10A of the Dekkhan Agriculturists' Relief Act should be confined to that limited class of suits which is described in section 3 of the Act whereas the present suit being a suit for partition of certain properties does not fall within that class. In my opinion that contention is not well-founded. The material words of the section are "at any stage of any suit or proceeding to which an agriculturist is a party." These words must be given their ordinary and natural meaning, and the Legislature must be taken to mean what it plainly expresses. The illustrations attached to that section show that it was intended to give full effect to the plain words of the enactment. Neither of the suits referred to in illustrations (*a*) and (*c*) falls within the restricted class of suits described in section 3. The illustrations given in the statute "are of relevance and value in the construction of the text." In *Mahomed Syedol Ariffin* v. *Yeoh Ooi Gark*[1] the Privy Council observes: "It would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be

[1] (1916) L. R. 43 I. A. 256 at p. 263.

1922.

HOLLEPPA KALLAPPA v. IRAPPA GIRI MALLAPPA.

the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired." Moreover a comparison of the language used in sections 10A, 11 and 12, which all occur in the 3rd Chapter of the Act, yields the same result. For, whereas the words used in section 10A are "any suit or proceeding to which an agriculturist is a party", those used in sections 11 and 12 are "suit of the description mentioned in section 3." That this variation of language is not attributable to a desire of improving the style or of avoiding repeated use of the same words, becomes obvious on a mere reading of sections 11 and 12 themselves. In my opinion, therefore, section 10A has a wider operation than what is contended for on behalf of the appellants; and this construction best harmonizes with the object which the Legislature had in view in passing the enactment.

Appeal dismissed: case remanded.

R. R.

APPELLATE CIVIL.

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

1922. January 17.

HANMANT TIMAJI DESAI AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS *v.* RAGHAVENDRARAO GURURAO DESAI (ORIGINAL PLAINTIFF), RESPONDENT*.

Decree—Mortgage decree—Execution—Payment in instalments—Failure to pay instalments—Payment, appropriation of.

A decree passed on a mortgage, dated 1904, made the decretal amount payable in annual instalments, and provided that on failure to pay two instalments, the whole decree could be executed by sale of the mortgaged property

*First Appeal No. 157 of 1921.