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what is due for the principal on the mortgage bond, he cannot be allowed to say that the principal is more than what it is stated to be in the plaint. Certainly there are no provisions of the Dekkhan Agriculturists' Relief Act which would entitle the Court in taking an account to add anything to the amount stated as principal in the bond for which the mortgaged property stood security. The appeal, therefore, must be dismissed.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

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

GANESH VENKATESH JOGLEKAR (ORIGINAL PLAINTIFF), APPELLANT v.
RAMCHANDRA NARAYAN JOGLEKAR (ORIGINAL DEFENDANT), RESPONDENT^a.

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Land Revenue Code (Bom. Act V of 1879), section 121—Boundary line—Survey Officer deciding that a strip of land lying between two numbers was common property of adjoining owners—Dispute as to title between owners—Jurisdiction of civil Courts.

The plaintiff and the defendant were owners of adjoining houses in the city of Poona. The houses were separated by an open space about five feet in width. On this space were a stable and a gutter. In 1916 it was decided in an enquiry by the Survey Officer that the gutter and the stable were common property of the parties. The plaintiff thereupon sued for a declaration that the ground on which the gutter and the stable stood belonged exclusively to him. The trial Judge decided that the Survey Officer's decision had no judicial force and on going into the question of title he held that the plaintiff was entitled to a declaration with respect to the stable alone. On appeal by the defendant, the District Judge reversed the decree on the ground that the jurisdiction of the civil Court to entertain the suit was ousted under the provisions of section 121 of the Land Revenue Code.

Held, reversing the decision, that it would be the duty of the Enquiry Officer to settle the boundary between the lands of adjoining house owners, and the boundary so settled would, according to the provisions of section 121 of the Land Revenue Code, be determinative of the rights of the land-holders on either side of the boundaries so fixed; but it would not be determinative of

^a Second Appeal No. 719 of 1920.

any rights which the holder of one number could claim to exercise over the land belonging to the holder of the adjoining number, and section 121 could not give jurisdiction to the Survey Officer to decide, as he appeared to have decided, that a broad strip of land lying between the two numbers was common to both the adjoining owners.

SECOND appeal against the decision of K. B. Wassodev, District Judge of Poona, reversing the decree passed by D. T. S. Taskar, Subordinate Judge at Poona.

Suit for a declaration and injunction.

The plaintiff and the defendant were close relatives residing in two contiguous houses (Nos. 175 and 174) in the city of Poona. The houses were separated by an open space five feet in width adjoining the main thoroughfare. Over this space there was a temporary corrugated iron stable and a gutter near the defendant's house.

In 1915, the Government appointed an officer to survey the city of Poona under the provisions of section 131 of the Land Revenue Code. That officer decided on the 16th September 1916 that "the gutter and the stable, as they then stood, were common property of the parties."

The plaintiff being dissatisfied with the decision, instituted the present suit for a declaration that the stable and the land beneath it and also the open space containing the drain belonged exclusively to him and also prayed for grant of certain injunctions restraining the defendant from molesting him in the exercise of his rights.

The defendant contended *inter alia* that the drain and the ground under it belonged to him exclusively and the stable and the ground under it were of joint ownership; that the Court had no jurisdiction to set aside the decision of the Enquiry Officer.

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The Subordinate Judge found that the decision of the Enquiry Officer had no judicial force and decreed that the plaintiff was entitled to a declaration and injunction with respect to the stable alone.

On appeal, the District Judge reversed the decree on the ground that the jurisdiction of civil Courts to entertain suits of this character against the decision of the Survey Officer was ousted under the provisions of section 121 of the Land Revenue Code. His reasons were :

“ But it has been contended that finality could be given to his decision only on the settlement of a boundary, that is, if he fixes the boundary line. And as the Survey Officer has omitted to do this and merely declared the disputed plot to be of common ownership the decision is *ultra vires* and it is deprived of its conclusive character. It seems to me that this argument is not well founded. It cannot be denied that the boundary lines of the parties' exclusive holdings have been finally fixed and the Survey Officer has declared their rights over the intervening plot. The Survey Officer was competent to declare these rights under the provisions of clause (b) to section 121 of the Code and his decision must receive the finality contemplated in section 121 of the Code.”

The suit was, therefore, dismissed.

The plaintiff appealed to the High Court.

S. Y. Abhyankar, for the appellant :—The learned Judge has erred in holding that the civil Court had no jurisdiction to entertain the suit. Section 119 of the Bombay Land Revenue Code gives power to the Survey Officer to fix a boundary between two survey numbers and as soon as he does that his power ends. He cannot determine the rights appertaining to any strip of land lying beyond the boundary line. The Survey Officer was also wrong in holding that a certain strip of land situate beyond the boundary line was of the joint ownership of both the parties. A civil Court has the jurisdiction to decide the rights relating to such a strip of land,

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Coyajee with *H. G. Kulkarni*, for the respondent:—
 In section 3 (9) of the Bombay Land Revenue Code “boundary mark” is defined also as meaning “strip of ground” and the Survey Officer was quite competent to hold that a particular strip of land formed the boundary between the two numbers. The same was fixed by evidence of joint occupation under section 119 of the Bombay Land Revenue Code and this decision is determinative of the rights of the parties with regard to this strip under section 121 of the Bombay Land Revenue Code. In this case the plaintiff does not assert that he has acquired a right over part of another’s holding by adverse possession and hence the decision in *Bhaga v. Dorabji*⁽¹⁾ does not apply. When the City Survey Officer has acted within his rights the civil Court has no jurisdiction to vary the decision.

MACLEOD, C. J. :—The plaintiff brought this suit for a declaration that the ground on which the stable described in the plaint stood belonged exclusively to the plaintiff; that the ground under the drain described in the plaint belonged to the plaintiff; that the plaintiff had a right to remove the drain after giving proper notice to the defendant; and that in case it was found that any part of the ground under the drain was joint, an injunction might be granted against the defendant restraining him from obstructing the plaintiff while doing any work on the ground beyond that point, and for further and other relief.

The plaintiff and the defendant are the owners of adjoining properties in the City of Poona, and the dispute has arisen with regard to the stable and the drain mentioned in the plaint. There had been a decision by the Enquiry Officer to the effect that the gutter and the stable were common property. The Enquiry

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Officer had been appointed by Government apparently under section 131 of the Bombay Land Revenue Code for the purpose of making a survey of lands in the City of Poona. He was invested with all the powers and duties of a Survey Settlement Officer in charge of a survey, for the purposes of the survey of the lands other than those used ordinarily for the purposes of agriculture only, within the site of the City of Poona.

The trial Judge has decided that the decision of the Enquiry Officer with respect to the stable and the drain in question had no judicial force, and that he was entitled to decide that point in this suit. Accordingly the learned Judge held that the plaintiff was entitled to a declaration and injunction with respect to the stable alone. The rest of his claim was dismissed.

Against that decree the defendant appealed and the plaintiff filed cross-objections. In appeal a preliminary point was taken that the jurisdiction of the civil Courts to entertain suits of that character against the decision of the Survey Officer was ousted under the provisions of section 121 of the Bombay Land Revenue Code. The defendant's contention was held good by the learned District Judge, and the suit was accordingly dismissed. At that time the decision of this Court in *Bhaya v. Dorabji*⁽¹⁾ had not been published. That, no doubt, was a case of agricultural land. But the principles with regard to the survey of land in a town are just the same, and even stricter than they would be in the case of agricultural lands. It would be the duty of the Enquiry Officer to settle the boundary between the lands of adjoining house-owners, which would ordinarily be by means of a line drawn on a plan, and that line, according to the provisions of section 121 of the Bombay Land Revenue Code, would be determinative of

(1) (1920) 45 Bom. 67.

the rights of the land-holders on either side of the boundary so fixed. But it would not be determinative of any rights which the holder of one number could claim to exercise over the land belonging to the holder of the adjoining number, and I do not think the section can give jurisdiction to the Enquiry Officer to decide, as he has done, that a broad strip of land lying between the two numbers was common to both the adjoining owners. I do not gather from his decision that he had fixed that broad line measuring nine feet at one end and five feet at the other as the boundary line according to the survey. I should prefer to read his directions as showing, if anything, that the boundary line of house No. 174 was on the west side of the common land and the boundary of house No. 175 was on the east side. But unless that broad strip could be considered as a boundary line, it certainly remains in obscurity where the boundary line between the adjoining houses runs. If, therefore, the Enquiry Officer, held that this strip was the boundary, then I think he was exceeding his functions. If he held that the boundary line of house No. 174 was on the east side of the gutter, then he had no jurisdiction to decide what rights the owner of house No. 174 had over the gutter which lay within house No. 175.

It seems to me, therefore, that the decision of the learned District Judge was wrong. The decree of the lower appellate Court must be set aside and the case must go back to that Court to be decided on the merits, that is to say, the Court will decide what are the respective rights of the parties over the disputed land. The appellant must get his costs of the appeal.

SHAH, J. :—I agree.

Decree reversed.

J. G. R.

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