

**Janoji Vs. Janoji**

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**SooperKanoon Citation :** [sooperkanoon.com/329550](http://sooperkanoon.com/329550)

**Court :** Mumbai

**Decided On :** Dec-19-1882

**Reported in :** (1883)ILR7Bom185

**Judge :** Charles Sargent, Kt., C.J. and ;Nanabhai Haridas, J.

**Appellant :** Janoji

**Respondent :** Janoji

**Judgement :**

Charles Sargent, Kt., C.J.

1. This suit was brought by an agriculturist, under the Deccan Agriculturists' Relief Act, to redeem his lands which had been mortgaged to the defendant. The defendant contended that, by the terms of his mortgage-bond, he was not bound to account, and that Section 12 of the Act was not applicable. The Subordinate Judge overruled the objection, and proceeded to take the account under the above section, which resulted in a balance of Rs. 107-8-6 being found in favour of plaintiff, and passed a decree for the restoration of the land to the plaintiff and the payment of Rs. 107-8-6, minus the defendant's costs. The District Judge confirmed this decree. The only point which was seriously argued before us on second appeal was that a decree for the balance of Rs. 107-8-6 ought not to have been passed in favour of plaintiff, the account having been taken under the Act. The general practice, when the mortgagee has been found on taking the accounts

to have been overpaid, is to order the payment, by him, of the balance due from him, with interest, from the date of the institution of the suit Seton on Decrees, page 469. The application of such a rule, in a redemption suit instituted under the Daccan Agriculturists' Relief Act, in cases where the provisions of the mortgage contract between the parties have been set aside for the purpose of taking the account under those of Section 13 of that Act, would not only lead to the redemption of the mortgaged land contrary to the terms and conditions of that contract, but would in many cases, such as the present one, oblige the mortgagee to refund money which had rightly come into his hands under that contract. There is no express provision in the Statute, either directing or enabling this to be done; and remembering that the Act encroaches on existing legal rights, it should, on general principle, not be construed to extend beyond the particular object which the Legislature had in view in passing the Act, and which in the preamble is said in express terms to be to relieve the agriculturist in the Deccan from indebtedness. That object is effected when the agriculturist is enabled to discharge his debt and recover his land on far easier terms than those which he has contracted for, and it would be going beyond that object if the Act were construed to entitle him also to a refund of money which had already properly come into the mortgagee's hands under the contract. In the present case it was not disputed that the balance in favour of the mortgagor was the result of the account being taken according to the provisions of Section 13 of the Deccan Agriculturists' Relief Act. The decree of the Court below must, therefore, be varied by omitting the direction ordering the appellant to pay the balance of Rs. 107-8-6. Costs of appeal here and in the lower Appellate Court to be paid by the parties themselves.