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Mahamad Ibrahim Vs. Shaikh Mahamad

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Court : Mumbai

Decided On : Oct-07-1919

Reported in : (1920)22BOMLR124; 55Ind.Cas.557

Judge : Norman Macleod, Kt., C.J.

Appeal No. : Second Appeal No. 1164 of 1917

Appellant : Mahamad Ibrahim

Respondent : Shaikh Mahamad

Disposition : Appeal dismissed

Judgement :

Norman Macleod, Kt., C.J.

1. The plaintiffs sued for accounts under the Dekkhan Agriculturists' Belief Act and redemption. Accounts were taken, and by the decree of the lower appellate Court the plaintiffs had to pay into Court the amount of Rs. 1,961-2-0 with interest at 6 per cent, on the principal amount of Rs. 1,895-0-5 from date of suit and costs of various kinds, the whole amount to be paid by instalments of Rs. 300 every year commencing from any date in January 1915. The plaintiffs were held entitled to recover possession of the property mortgaged at once, the mortgagee being liable to account for profits received from the date of suit till restoration of possession to the plaintiffs. The mortgagee has objected to that part of' the decree which gives

him 6 per cent, interest on the one hand, and directs him to account for profits received from the date of suit till restoration of possession to the plaintiffs on the other hand. The argument was based on the decision of this Court in Ramchandra v. Kallo : (1915)17BOMLR630 . But there the facts were entirely different, as it was evidently held that the mortgage had been paid off at the date of suit, and it was held by the Chief Justice that as the accounts were taken under the Dekkhan Agriculturists' Relief Act which are far more favourable to the mortgagor than the mortgage contract, and as nothing was said in the Act as regards mesne profits from the date of suit, the Court was not entitled, although the mortgage was paid off at the date of suit, to order the mortgagee in possession to hand over mesne profits from the date of the suit onwards. But here the mortgage is continuing and the Court under the, Dekkhan Agriculturists' Belief Act has taken an account of what was due on the mortgage up to the date of suit, and under Section 15 B (1) has directed as to what shall happen after the date of suit. The Court has allowed interest to the mortgagee at 6 per cent, and has directed the mortgagee to account for mesne profits. That the Court was entitled to do under the last lines of the sub-section. It is impossible for me to imagine that the learned Judges in the Courts below, who must have passed numbers of decrees of this nature, were not acting in accordance with their usual practice, and if that practice was wrong, it must have been long before considered in appeal in this Court. In my opinion the decision was correct and the appeal must be dismissed with costs.

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