

(1921) 01 BOM CK 0024**Bombay High Court****Case No:** Second Appeal No. 506 of 1920

Madhav Balkrishna Deshpande

APPELLANT

Vs

Appaji Venkatesh Deshpande

RESPONDENT

Date of Decision: Jan. 13, 1921**Acts Referred:**

- Dekkhan Agriculturists Relief Act, 1879 - Section 10B

Citation: AIR 1921 Bom 398 : (1921) 23 BOMLR 203**Hon'ble Judges:** Shah, J; Norman Macleod, J**Bench:** Division Bench**Judgement**

Norman Macleod, Kt., C.J.

The plaintiff filed this Suit No. 142 of in order to get possession of the land which had been sold him for Rs. 200 by the defendants. The defendants contended they were mortgagors and not vendors. Eventually the suit in a compromise decree by which the first defendant was to the plaintiff for his right as mortgagee the sum of Rs. within six months from the date of the decree, namely, 1st January 1917 with interest at eight annas per cent, per annum. Defendant No. 1 failed to pay the amount and intimated to "plaintiff, the defendants" right to redeem the transfer to cease, and in that case the plaintiff was to get possession of the land in suit by right of ownership. As the amount stipulated was not paid the plaintiff applied to have the decree made absolute. The defendant made a contention that he was an agriculturist and annual of Rs. 50 should be granted. The learned trial Judge thought that there was no authority for holding that a decree, if it was based on a compromise, could not be altered u/s 10B of the Dekkhan Agriculturists' Relief Act. Accordingly, the allowed instalments of Rs. 75 a year. In appeal this order was confirmed. But although the learned Judge says the appellant's main contention is that once there is a decree there can be no variation by a Court in any proceedings in or in execution, "that question has not been seriously considered in the judgment.

2. In *Supdu v. Madhavrao*" we considered in which circumstances the Court could allow an alteration in the term of a consent decree. In that particular case we did not go further than saying that the Court might relieve against forfeiture which might have been incurred by a party through not complying with the terms of a consent decree. It certainly never suggested that a party to a consent decree can apply to the Court for an alteration in its terms. He could only ask the Court to enable him to perform the terms of the decree although the time had passed for performance. In this case the defendant asked the Court by a miscellaneous application to entirely alter the term of the decree.

3. In *Shivayagappa v. Govindappa* ILR (1913) Bom. 614; 15 Bom. L.R. 768 f. b, it was held that a compromise in a suit which came under the Dekkhan Agriculturists' Relief Act was not bad in law because it was made without compliance with the special provisions of Section 15B of that Act. In that case an attempt was made to execute the compromise decree, but the defendant urged that a compromise decree was illegal. The Chief Justice in delivering the judgment said: "There is nothing to show that the Legislature intended that the provisions of Section 15B should be applied by analogy wherever a compromise is entered into, which is to be recorded by the Court and to form the basis of a consent decree. As Mr. Justice West observed in *Gangadhar Sakharam v. Mahadu Santaji* ILR (1884) Bom. 20 it is a general principle " that exceptional provisions are not to receive a development to all their logical consequences contrary to the general principles of the law. Here we are asked to extend by analogy the provisions of a special section contrary to the general principles expressed in Order XXIII, Rule 3. A compromise which is made by parties who are *sui juris* should be given effect to. We do not think that there is anything unlawful in the compromise or contrary to public policy." Therefore this application by the defendant to the Court to alter the term of the consent decree should not have been acceded to. At the most the Court could have allowed the defendant to any the decretal amount although the decretal period had expired. The decree of the lower appellate Court must be set aside and the plaintiffs claim allowed as prayed. The appellant will get his costs throughout from the respondent.