

(1921) 12 BOM CK 0025**Bombay High Court****Case No:** First Appeal No. 346 of 1920

Vithaldas Bhagwandas

APPELLANT

Vs

Murtaja Husein

RESPONDENT

Date of Decision: Dec. 21, 1921**Acts Referred:**

- Dekkhan Agriculturists Relief Act, 1879 - Section 15B

Citation: (1922) 24 BOMLR 267 : 67 Ind. Cas. 151**Hon'ble Judges:** Shah, J; Norman Macleod, J**Bench:** Division Bench

Judgement

Norman Macleod, Kt., C.J.

The plaintiff sued to recover Rs. 6000 on a bond passed by the mortgagor-defendants on the 20th December 1892 for Us. 15,000 whereby the suit property was mortgaged, the mortgage amount being payable by annual instalments of Rs. 500. The suit was to recover twelve instalments due under the bond commencing with 1904 As the mortgagor-defendants were agriculturists, an account was taken under the Dekkhan Agriculturists' Relief Act by the Commissioner who reported that Rs 6231-10-0 were due for principal and a larger amount for interest, and as the plaintiff would not be able to recover more than the amount of principal as interest, it followed that on the Commissioner's report an amount of Rs. 12,463 4-0 was due to the plaintiff. The Judge has dealt with the Commissioner's report in a somewhat cursory fashion, as he has only considered the various bonds entered into by the defendants from time to time and has come to the conclusion that only three of those bonds for Rs. 2,000, 40 and 800 were for cash consideration. How he came to that conclusion is not very clear, because from the Commissioner's report it will be seen that the plaintiff was able to produce his accounts from 1879 showing a very large number of small cash advances at short intervals until 1892, and it would also appear that the bonds taken by the plaintiff from time to time in no way corresponded with the account which he kept of the

advances made to the defendants. So that there is no reason whatever for discarding entirely the accounts as drawn up by the Commissioner, and looking only to certain bonds as having been passed for cash consideration. Considering it does not appear that the advances made by the plaintiff correspond with the amount of the various bonds passed by the defendants, we would prefer to rely on the very careful account taken by the Commissioner; and we think that on the whole it is far more probable that on taking the accounts under the Dekkhan Agriculturists' Relief Act, over Rs. 12,000 were really due by the defendants as a result of the dealings between the parties. But under the bond itself, apart from any question of taking accounts under the Dekkhan Agriculturists' Relief Act, only Rs. 9500 remain due, and it would be a very curious result if a debtor owing to his seeking the relief afforded by the Dekkhan Agriculturists' Relief Act should have to pay more than he is obliged to pay according to the terms of his bond I cannot imagine that it was ever intended that the law should produce such an extraordinary result as that. I think the proper order to pass in this suit is that Rs. 9500 are due by the mortgagor-defendants to the plaintiff. That amount we direct to be paid in two instalments, Rs. 4,750 to be paid on the 21st June 1922, and the second instalment of Rs. 4,150 to be paid on the 21st June 1923 In default the plaintiff should apply u/s 15 B of the Dekkhan Agriculturists' Relief Act.

2. The eighth respondent, who is a party to the suit as defendant No. 9, is a second incumbrancer, and the Judge has rightly directed that the property subsequently mortgaged to him should only be sold when it has been found that the sale-proceeds of the remaining properties encumbered in favour of the plaintiff are insufficient to meet the plaintiff's decree.

3. The costs of the appeal and of the suit to be added to the mortgage amount.