

(1908) 07 BOM CK 0026**Bombay High Court****Case No:** Second Appeal No. 875 of 1907

Dadabhai Muse Valli

APPELLANT

Vs

Dadabhai Valli Abhram

RESPONDENT

Date of Decision: July 13, 1908**Acts Referred:**

- Dekkhan Agriculturists Relief Act, 1879 - Section 12

Citation: (1908) 10 BOMLR 745**Hon'ble Judges:** Basil Scott, C.J; Heaton, J**Bench:** Division Bench**Judgement**

Basil Scott, C.J.

This is a suit for redemption in which both parties are agriculturists, and there is no doubt that the provisions of the Dekkhan Agriculturists" Relief Act apply.

2. In accordance with the provisions of Section 12 of that Act the lower Courts have gone into the origin and nature of the transaction which was upon the face of it a usufructuary mortgage to secure payment of Rs. 2,499, and upon a consideration of the history of the transaction they have come to the conclusion that Rs. 2,499, is the true consideration for the mortgage.

3. It is provided by Section 13 of the Act that " when the Court enquires into the history and merits of the case u/s 12, it shall notwithstanding any agreement as to setting off the profits of the mortgaged property without an account in lieu of interest, open the account between the parties from the commencement of the transaction and take that account according to the rules specified in Sub-sections (a) to (f); and when the account has been so taken the balance appearing due shall be deemed to be the amount due at the date of the suit."

4. The lower Courts seem to have considered that the provisions of Section 13 were not imperative and that they had done their duty when they had ascertained the

consideration for the mortgage-deed after an inquiry u/s 12.

5. It is however, clear from that part of Section 13 to which we referred that the section is imperative and that the amount due in a suit for redemption of a usufructuary mortgage in which the "provisions of Section 12 have been complied with, is the amount which is found to be due upon taking accounts in the manner provided by Section 13.

6. The accounts appear to have been taken in accordance with the provisions of Section 13 by the Commissioners appointed by the first Court, with the result that they brought out a sum payable to the defendants in excess of Rs. 2,499. This apparently was a result which was not expected and one by which the lower Courts did not feel bound. They accordingly disregarded the result of the account and have awarded only Rs. 2,499.

7. In this we think they were in error. We, therefore, remand the case in order that the Court may take an account according to the provisions of Section 13 and thus ascertain the amount payable to the defendants as the price of redemption. When that amount has been ascertained it will be open to the Court to decide how the decree should be made payable, in what instalment and what rate of interest if any should be allowed upon the amounts payable.

8. We set aside the decree. The plaintiffs must pay the defendants" costs in this Court and in the lower appellate Court.

9. The original order as to costs in the first Court we think was right. In any fresh decree which may be passed provision should be made for the further costs of the hearing.