

Special Appeal No. 451 of 1862.

1863.
July 14.

MALESHA'PPA' bin KARVIRA'PPA'..... *Appellant.*
BASSA'PPA' bin NINGA'PPA' SHETAVNEKAR... *Respondent.*

Deed—Registration—Priority—Act XIX. of 1843.

Under Act XIX. of 1843 a registered deed is entitled to priority over an unregistered deed of an earlier date.*

THIS action was instituted in the Court of the Munsif of Savandatti to recover possession of a house. The Munsif made a decree in favour of the original plaintiff. On appeal, the Judge of Dhárwár, F. Lloyd, confirmed the Munsif's decree. The facts of the case appear in the following extract from his judgment:—

“The plaintiff Bassáppá's house was sold in execution of a decree sued out against him on the 18th of August 1858, and purchased by one Rágho Nágesh. Bassáppá, who was not present at the time of the sale, alleges he returned, and the following day repurchased the house from Rágho Nágesh, in proof of which he produces a deed, dated 19th August 1858, on which he now sues to be put in possession. Rágho Nágesh admits having executed the deed of sale, but asserts that it was obtained from him by fraud. Malesháppá, the defendant, in whose possession the house now is, disputes Bassáppá's claim, on the ground that he too purchased the house from Rágho Nágesh, under a deed of sale dated 18th August 1858, the genuineness of which document is also admitted by Rágho Nágesh, and which was duly registered under Act XIX. of 1843. As to which of the parties obtained possession of the house from Rágho Nágesh is not very clearly established, though, from the papers received from the Magisterial Department, it appears that, on a complaint made against Bassáppá by Malesháppá for interfering with him, it was decided by the Assistant Magistrate in charge of the district that possession was with Malesháppá.

“Both the deeds executed by Rágho Nágesh, and admitted by him, were drawn upon unstamped paper, but both have been subsequently stamped, that held by Bassáppá on the 30th of May 1860, and that held by Malesháppá on the 29th of January 1861; and, therefore, as it has not been proved that the former was obtained by fraud, it must, in the opinion

* See 2 Bom. H. C. Rep., 2nd edn. 198; *Ibid.* 204; *Ibid.* 209; *Ibid.* 222; 3 Bom. H. C. Rep., A. C. J. 167; 4 Bom. H. C. Rep., A. C. J. 68, 69, 143.

of the Court, under cl. 1, Sec. xiv. of Reg. XVIII. of 1827 (a), be considered as giving a claim to the house in question superior to that conferred by the latter."

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The defendant below appealed against the decree.

The appeal was argued before FORBES and WARDEN, JJ.

Dhirajlál Mathurádás, for the appellant, contended that, as the appellant's deed of sale had been accompanied by possession, by Hindú law he was entitled to the property as against the respondent, whose deed had not been accompanied by possession. The appellant's deed of sale, having been registered, was entitled to preference over that of the respondent, which was not registered.

Fakírappá for the respondent.

PER CURIAM :—Malesháppá's deed of sale, having been registered, invalidated the respondent's deed of sale, which was not registered. The decree is, therefore, reversed.

Decree reversed.

Special Appeal No. 56 of 1863.

July 21.

GUMA'N GALLUBHA'I *Appellant.*
SORA'BJI BARJORJI *Respondent.*

Payments—Oral Evidence—Sámádaskat.

Payment of a debt due on a *sámádaskat* may be proved by oral evidence alone.

THIS was an action to recover the sum of Rs. 680, amount of principal and interest due on a *sámádaskat*, dated the 4th of Chaitra Vadya, Samvat 1913.

The defence set up was payment.

The Munsif of Súrat, A'zam Davalatráv Sampatráv, who tried the case, held payment to be proved, and threw out the claim.

On appeal by the original plaintiff, Sorábji, the Judge of Súrat, A. B. Warden, reversed the Munsif's decree, and gave a decree for the amount claimed, on the ground that

(a) "A bond or other writing stamped after its original date, if executed within the zillahs subordinate to the Presidency of Bombay, shall, so far as it is affected by the stamp, become valid against the grantor from its original date: but as to the rights of third parties the date of its being stamped shall be held to be its real date."