

1863.
BECHAR
BHAGVA'N
v.
BAI LAKSHMI.

by her, but no power to alienate immoveable property except under special circumstances. We, therefore, reverse the decree of the lower court as regards the moveable property, and order that Bechar recover from Lakshmi the moveable property claimed. Costs to be borne by the parties proportionally throughout.

Decree amended.

Sept. 28.

Special Appeal No. 108 of 1863.

PARSHOTAM RANCHOD.....*Appellant.*

JAGJIVAN MAYA'RA'M*Respondent.*

Registration—Registered Deed preferred to prior Unregistered Mortgage—Reg. IX. of 1827, Sec. 6—Act XIX. of 1843, Sec. 2.

The first part of cl. 1, Sec. VI. of Reg. IX. of 1827 (a) is unrevoked, and therefore, a purchaser claiming under a deed of purchase duly registered is entitled to be preferred to a mortgagee claiming under a deed of mortgage executed before his purchase, but not registered until after the deed of purchase had been registered.

THE respondent (plaintiff below) brought this action to realise the amount due to him on a *sankhat* or mortgage deed dated the 26th of October 1861, and registered on the 17th of January 1862, by which Davalat, a defendant, had mortgaged to him a stable and other property specified in the mortgage; plaintiff alleged that Davalat had subsequently sold the stable to the defendant Parshotam. The plaintiff claimed to have the amount due to him in respect of his mortgage raised by sale of the property.

The defendant Davalat, the mortgagor, did not appear.

The defendant Parshotam appeared, and pleaded that he purchased the stable in question by a deed bearing date the 21st of November 1861, and registered on the 11th of January 1862; that the date of the registration of his deed of sale was prior to the registration of plaintiff's deed of mortgage; that plaintiff, Jagjivan, never had possession, and, therefore, his right to recover did not extend to the stable.

(a) 6. "First—Every deed or other writing transferring or mortgaging immoveable property situated within the Zillah, if registered in the register of title-deeds, shall, without regard to the date of execution, if proved to be valid, be preferred to and satisfied before any deed of the nature of those specified in Section 3, Clause 1 (sunnuds, deeds of sale, gift, devise, mortgage of lands, and awards . . . deeds of release or discharge of mortgages) either subsequently registered or not registered at all, but this preference shall extend only to the immoveable property thereby transferred or mortgaged."

The Şadr Amín of Ahmedábád, Ráv Sáheb Bháú Mayrál, found the deed sued on proved, and that the property mortgaged thereby was liable for the mortgagee's lien; with respect to the question of registration he held Act XIX. of 1843 (b) only applied where the documents were of the same nature, and did not affect the question involved in this case, as plaintiff relied on a mortgage-deed, and defendant on a deed of sale. He accordingly awarded plaintiff the amount of his lien, to be recovered by the sale of the property mortgaged and from Davalat personally.

The defendant Parshotam alone appealed against that part of the Şadr Amín's decree which declared the stable purchased by him to be liable for Jagjivan's claim. W. Sandwith, the Assistant Judge of Ahmedábád, affirmed the decree of the Principal Şadr Amín, on the grounds stated in the following extract from his judgment:—

"The question appears to be whether the claim of Jagjivan to recover from the stable is rendered invalid by the subsequent sale of the building to Parshotam, and the prior registration of the deed of sale by that person.

"The Court considers that the claim of Jagjivan is in no way affected by either circumstance, there being no objection to the sale of property previously mortgaged, the principle being that the purchaser takes the property subject to all its incumbrances. Parshotam should, therefore, have been more careful before concluding his purchase.

"As regards Act XIX. of 1843, the Court agrees with the Şadr Amín, that Sec. 2 only applies to papers of the same description, and not to a case like the present, where a deed of mortgage and one of sale are concerned. Parshotam did not question the truth of the *khat* in his original statement, nor is there anything to support what he has stated in the petition of appeal."

Against this decision Parshotam preferred a special appeal to the High Court on the ground, among others, that his

(b) "2. Every deed of sale or gift of lands, houses, or other real property, a memorial of which has been or shall be duly registered according to law, shall, provided its authenticity be established to the satisfaction of the Court, invalidate any other deed of sale or gift for the same property which may not have been registered, and whether such second or other deed shall have been executed prior or subsequent to the registered deed, and * * * every deed of mortgage on land, houses, and other real property * * * a memorial of which has been or shall be duly registered according to law, and provided its authenticity be established to the satisfaction of the Court, shall be satisfied in preference to any other mortgage on the same property which may not have been registered, and whether such second or other mortgage shall have been executed prior or subsequent to the registered mortgage." * * *

1863.

PARSHOTAM
RANCHOD

v.

JAGJIVAN,
MAYA'RAM.

1863.

PARSHOTAM
RANCHOD
v.
JAGJIVAN
MAYA'RA'M.

deed of sale, having been registered prior to Jagjivan's deed of mortgage, was entitled to preference, under Sec. 2 of Act XIX. of 1843.

The appeal was heard by NEWTON, WESTROPP, and TUCKER, JJ.

Nánábhái Haridás and Dádábhái Framji for the appellant.

The Court delivered the following judgment:—

Whatever may be the effect of Act XIX. of 1843, we think that it has not deprived the appellant of the right to rely on Reg. IX. of 1827, Sec. 6. The latter portion of the first clause of that section, relating to notice of unregistered documents, has been repealed by Act I. of 1843, but the first part of that section, which, taken together with Sec. 3 of the same Regulation, clearly provides that a deed of sale duly registered shall be preferred to and satisfied before a deed of mortgage unregistered, or registered at a subsequent date, has not been repealed by Act I. of 1843, Act XIX. of 1843, or any other enactment of which we are aware.

We, therefore, amend the decision of the Court below, by reversing so much of the Assistant Judge's decree as affects the appellant, Parshotam, and declare him to have acquired by his deed of purchase the property thereby conveyed, free from the *sánkhat* or mortgage of the respondent, Jagjivan, who must pay to the appellant, Parshotam, his costs throughout this suit, up to and inclusive of his costs of this appeal.

Decree amended.

Sept. 30.

Special Appeal No. 286 of 1863.

KA'LADDIN GURU' BAKAS Appellant.
RA'GHOJI and another Respondents.

Valuation of Suit—Improper Valuation of Suit—Special Appeal.

An objection to the decree of a Subordinate Court, founded on the improper valuation of the suit, is not such an objection as may be entertained when raised for the first time in special appeal.

RA'GHOJI and another were plaintiffs, and sued, in the Court of the Principal Śadr Amín of Pupá, to eject Káladdin from certain lands, setting forth that they, plaintiffs, had, in Shake 1773, A.D. 1851, mortgaged these lands to defendants, that they had since redeemed them, and taken back