

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 The latter portion of the first clause of that section, relating to notice of unregistered documents, has been repealed by Act I. of 1843, but the first part of that section, which, taken together with Sec. 3 of the same Regulation, clearly provides that a deed of sale duly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be preferred to and satisfied before a deed of mortgage unregistered, or registered at a subsequent date, has not been repealed by Act I. of 1843, Act XIX.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 Šadr 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

the mortgage deed, but as defendants refused to give them up, plaintiffs brought this action to eject them, estimating their suit at the amount of the annual assessment of the lands.

Defendant, Káladdin, pleaded that the mortgage had not been redeemed; that he (defendant) had assigned his rights as mortgagee to third parties not before the court, and made over the mortgage-deed to them, and it was through the connivance of these parties that plaintiffs got possession of the mortgage-deed, and tore it as if cancelled; wherefore defendant claimed to hold the lands until his lien was satisfied.

The Principal Šadr Amín of Puṇá was of opinion that plaintiffs had not redeemed the mortgage, and he accordingly threw out the claim with costs.

On appeal, the Assistant Judge of Puṇá, F. D. Melvill, considered the mortgage had been redeemed, and ordered that possession of the lands in question be handed over by defendant to plaintiffs.

The original defendant applied to the High Court for leave to present a special appeal against the decision, on the ground that as the suit was one for recovery of mortgaged property, it should have been laid in the amount of the mortgage, and not at the amount of the annual assessment as had erroneously been done.

The case was heard by FORBES and ERSKINE, JJ.

Pándurang for the appellants.

FORBES, J., delivered the following judgment:—

We are of opinion that as the sole objection to the decree of the Court below urged in this special appeal is that the suit was undervalued, and as this objection is a purely technical one, and is now raised for the first time, it ought not to be allowed to prevail. The proper time for taking an objection of this nature is at the registration of a plaint, and to allow it to be raised now for the first time would be doing great injustice to respondents. We determine, therefore, to dismiss this appeal, and to confirm the decree of the Court below, with all costs on appellants.

Decree affirmed.

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G. BAKAS
v.
RÁ'GHÓJÍ
et al.