

1863.

In re
DA'NA'PPA'
SUBRA'V.

Shántáram Náráyan appeared for the applicant.

PFR CURIAM (FORBES and WESTROPP, JJ.):—If no competent and unobjectionable male relative be ready and willing to act as guardian of Dánáppá for the purposes of the cause, and if there be no objection to the mother except on the ground of her sex, the Court are of opinion that she may properly be allowed to act as guardian in this suit.

Dec. 21.

GORA'KI bin KA'NOJI *Appellant.*
NATHU bin A'PPA'JI *Respondent.*

Mortgage—Surety—Assignment of Mortgage to Surety—Right of Mortgagor to redeem.

On a mortgage of land, with a proviso that, in default of repayment of the money advanced, the mortgage should be turned into a sale, a third party joined as surety undertaking to repay the amount advanced, if the mortgagor made default in payment at the stipulated time. Default was made, and the surety paid the money, and took an assignment of the land from the mortgagor.

Held—That the heir of the mortgagor was entitled to redeem, and that as against him the surety could not claim to hold the lands as purchaser.

THIS was a Special Appeal from a decree of T. Weeding, Acting Judicial Assistant to the Collector of Sátára.

The action was brought by the appellant (plaintiff below), in the Munsif's Court at Válvá, to recover possession of certain land, which he alleged the defendant had held under a lease from the ancestor of the plaintiff, which had expired several years before. The defendant denied the existence of the lease, and claimed to hold the land as assignee of Venkáji Raghunáth. The Munsif found that Viṭhu, uncle of the plaintiff, had mortgaged the land to Venkáji Raghunáth for Rs. 6, on condition that if not redeemed within one month the mortgage should be converted into a sale. The Munsif also found that the defendant, Nathu, had joined as a surety, agreeing to pay the mortgage-money to Venkáji, and to take the mortgage-property, if it were not redeemed by Viṭhu within the month; and that, Viṭhu having failed to redeem, Nathu had paid off the mortgage, taken possession of the land, and got it transferred in the revenue books to himself. He,

therefore, held the plaintiff entitled to recover the land upon payment of Rs. 6 as principal, and Rs. 36-4-0 as interest up to the date of suit, and passed a decree accordingly.

On appeal, the Acting Judicial Assistant held that, as the month expired without repayment, the land became absolutely the property of the mortgagee, and that he then stood in a position to transfer it, and grant with it a sound title; and that the Munsif had no right to make conditions of payment. He reversed the decree.

The Appeal was argued before FORBES and WESTROPP, JJ.

Vināgakrāv Harichand for the appellant.

Shāntārām Nārāyaṇ for the respondent.

The Court having observed that Venkājī, by accepting payment of the mortgage-debt from the surety, had waived any right to treat the mortgage as converted into a sale, made the following order:—

The Court permits the appellant to withdraw from the suit, with liberty to bring a fresh suit, if he so desire, for redemption of the property mentioned in the plaint, it appearing to this Court that Nathu having, in his character of surety for Vithu, paid to Venkājī the mortgage-money, cannot be regarded as holding the land absolutely, as purchaser. The appellant to pay all costs in the suit.

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VA'MANA'JI KONERA'S CASE.

Dec. 18.

Vakil—District Judge—Power of Judge to remove Vakil.

A District Judge has no power to remove a *vakil* against his will from a Court to which he has once been allotted, except for a criminal offence, misbehaviour, or neglect of duty.

A PETITION had been presented by Vāmanāji Konerā, a *vakil* in the Solāpur District, praying for the reversal of an order transferring him from the Court of the Munsif of Bārsi to that of the Munsif of Madhen: stating that he had been practising as a *vakil* at Bārsi, with and without a *sanad*, from thirty to thirty-five years; that his son Raghunāth