

PER CURIAM:—The Court is of opinion that the exhibit No. 3, bearing date the 25th of June 1859, having been duly registered, is, under the registration laws, entitled to preference over the exhibit No. 12, dated the 4th of July 1855, which is unregistered.

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The Court, therefore, reverses the decrees of both the courts below : and declares that the plaintiff, William Spiers, is entitled to redeem the lands which are the subject of the suit, on payment of the sums, if any, still remaining due to the defendant, as principal and interest, on mortgages Nos. 8, 9, 10, and 11 in this suit ; and directs the court of first instance to proceed to take an account of what is still so due to the defendant, with respect to the said mortgages, having regard to the terms thereof ; and, if the said sum, so found due, be not paid by the plaintiff to the defendant, within six calendar months after the said sum be so ascertained and duly notified to him, it is ordered that the plaintiff be foreclosed from any right of redemption of the said mortgages.

The Court orders the defendant to pay to the plaintiff the costs in both appellate courts ; and each party to bear his own costs in the court of first instance.

*Suit remanded.*

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*Special Appeal No. 550 of 1863.*

July 4.

BHIKA'JI *et al.*, sons of R. G. Ok ..... *Appellants.*  
VALLABHDA'S *et al.*, sons of Krishṇa Keval *Respondents.*

*Mortgage—Registration—Possession—Act VIII. of 1859, Sec. 230.*

Held that a mortgagee whose bond was registered was entitled, under Sec. 230 of Act VIII. of 1859, to recover possession of the mortgaged land, of which he had been dispossessed, under a decree obtained against his mortgagor, by another mortgagee, whose mortgage bond had been subsequently registered, on condition that he satisfied the claim of the decree-holder : otherwise the defendant to be entitled to possession on his satisfying the plaintiff's mortgage claim.

THIS was a special appeal from the decision of C. Gonne, Joint Judge of the Konkan District, in Appeal Suit No. 126 of 1861, confirming the decree of the Munsif of Mahád, in Original Suit No. 971 of 1860.

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The respondents applied to the Munsif of Mahád, on the 11th of August 1860, under Sec. 230 of Act VIII. of 1859, to recover possession of land which they held in mortgage from Dulbá bin Parasharám. Their mortgage deeds were duly registered, and the fields were in their possession; but they were dispossessed on the 12th of July 1860, under a decree (No. 959 of 1859) obtained by the defendants against Dulbá; and the fields made over to the defendants.

The defendants replied, that one of the fields claimed by the plaintiffs did not form a part of the mortgaged property; that they had given the plaintiffs the option of satisfying their claim and retaining the fields, or of giving up the fields to them and allowing them to satisfy the plaintiffs' claim; and that the plaintiffs, as mortgagees with prior registered bonds, had no right to possession, but had only to have their claim paid off.

The Munsif, A'zam Madan Shríkrishna, laid down the point for decision to be: whether the plaintiffs or the defendants had a preferable right to possession. And he found, that although the disputed land was first mortgaged to the defendants, yet the plaintiffs' mortgage deeds having been registered before that of the defendants, the former had, under Sec. 6, Reg. IX. of 1827, and Act XIX. of 1843, a stronger claim than the defendants; that, although the defendants were ready to pay off the mortgage claims of the plaintiffs, that could not be done, as the defendants had not purchased the proprietary right to the land, and could not insist upon paying off the plaintiffs, a right which belonged to the proprietor alone: and that all the fields (except the one mentioned by the defendants, and which the plaintiffs admitted they had entered by mistake), had been in the possession of the plaintiffs, whose mortgage deeds were registered prior to that of the defendants, who had no right to turn them out of possession, and who were, therefore, directed to restore them possession, with costs.

The Joint Judge, on appeal, affirmed the Munsif's decree.

The case was heard before ARNOULD, Acting C.J., and NEWTON, J.

*Vishvanáth Náráyan Mandlik* (with him *Ganpatráv Bháskar*), for the appellants :—Although the mortgage deeds of the respondents were registered before that of the appellants, the registration only gives them a right to prior satisfaction, which the appellants had offered, and are still willing to give them. Unless they consent, the appellants, as decree-holders, have a claim on the mortgaged land, which the respondents must satisfy.

1864.  
BHIKA'VI  
et al.  
v.  
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et al.

*Pándurang Balibhadra, contra* :—The respondents were in possession of the property, and should not have been ousted to make room for the appellants, whose deeds were registered subsequently to their own.

PER CURIAM :—The Court modify the decree of the District Judge, and award possession to the plaintiffs, on condition that they satisfy the claim of the defendants as decree-holders ; or if plaintiffs decline complying with this condition, then defendants to be entitled to possession of the land, on satisfying the amount of the plaintiffs' claim, under their (the plaintiffs') mortgage. The parties to bear each their own costs throughout.

*Decree amended.*

*Special Appeal No. 302 of 1864.*

Aug. 15.

GIRJOJI BHIKA'JI SONA'R.....*Appellant.*  
KESHAVRA'V NA'VJI PA'TI'L HINGE .....*Respondent.*

*Mortgagee in Possession—Cultivation—Due Care.*

Held that a mortgagee in possession of land was bound to cultivate the best crop which it was ordinarily capable of yielding.

THIS was a special appeal from the decision of F. D. Melvill, Acting Assistant Judge of the Puná District, in Appeal Suit No. 1040 of 1862, reversing the decree of the Munsif of Khed, in Original Suit No. 2795 of 1861.

Keshavráv claimed Rs. 754-5-6, principal and interest due on a mortgage bond, dated Shrávan Sudha the 10th, Shake 1773. Girjoji admitted the bond, but alleged that, the