

1865.
Aug. 22.

Special Appeal No. 309 of 1865.

PARABHU'DA'S HIRA'CHAND *Appellant.*
DHONDU', SON OF BHIKAM BHAT *Respondent.*

Sale of Land—Registration—Act XIX. of 1843.

Held that the preference given, under Act XIX. of 1843, to the latter of two deeds of sale of immoveable property, when registered, over the earlier unregistered deed, is not confined to cases in which the first deed has not been carried into effect: as every duly registered deed of sale, if authentic, invalidates any other deed of sale which may not have been registered.

THIS was a special appeal from the decision of C. B. Izon, Acting Assistant Judge of the Konkan District, in Appeal Suit No. 401 of 1864, confirming the decree of the Munsif of Panvel, in Original Suit No. 747 of 1863.

Bhikam Bhat purchased a field in 1834 from Hiro, and let it to him for cultivation. While so possessed of the field, Lakhmá, heir of Hiro, sold it to the plaintiff, Parabhúdas, without the knowledge of Bhikam Bhat. In 1856, Hiro having refused to give over possession of the field, Bhikam Bhat sued him and got a decree, in execution of which the field was taken. The plaintiff then petitioned, under Sec. 230 of Act VIII. of 1859, to be put in possession.

The Munsif of Panvel threw out the claim, on the ground that the defendant's right as owner of the land was proved; and his decision was confirmed, on appeal, by the Acting Assistant Judge, whose judgment was as follows:—

“The Court laid down the following points for decision:—(1) What is the effect of the decree (No. 20) as regards the rights or claims of Parabhúdas: (2) Whether the land in dispute was ever given in possession to Bhikam; (3) Whether Bhikam's right to the land was acknowledged by Lakhmá, or not; (4) If points 2 and 3 are decided in the negative, then, is the second deed, executed by Lakhmá, entitled to a preference over the first deed, executed by Hiro to Bhikam, on the ground of the former only being registered. No further issue was sought.

"On the first point, I find that, as respects the decree No. 20, Parabhúdas is a third party, and it is not binding on him. It is true that he claims as a purchaser from Lakhmá, a defendant in the previous suit, but his purchase was made in the year before the decree was passed, and the decree could only bind Lakhmá in respect of such rights as he possessed at the time of the decree. If it should turn out that the owner of the land executed a deed of sale first to one party, and afterwards to another; and the first party comes forward to establish his right, and does so establish his right, to the land against the owner or seller, on the first deed, there is nothing to prevent the holder of the second deed now coming forward, under Sec. 230, and disputing the right of the holder of the first deed, on the ground that that first deed was not registered, while his, the second, deed was registered. But before it becomes requisite to make this inquiry, namely, whether, the second being registered, the first was not registered; and whether, therefore, under Reg. IX. of 1827, the first deed was thereby invalidated; it is necessary to inquire, whether (second and third points) possession of the land was given to the holder of the first deed, who thereby became, to all intents and purposes, the actual proprietor of the land, and that proprietorship was acknowledged by the person who executed the second deed, and before executing it: as, if this turns out to be the case, the question, whether the second deed invalidates the first deed, does not arise; inasmuch as the person executing the second deed, being at the time neither the proprietor of the land, nor in possession of it, no right could possibly be derived from him. The question, which of two deeds is entitled to the preference, can only arise, when the first deed has not been carried into effect.

"On the second and third points, I find that the land was given into possession of Bhikam; and that Bhikam's right was acknowledged by Lakhmá, before he executed the deed of sale to Parabhúdas. Proof of this appears to have been given on these points, in the former suit; and the

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A.B.
 this is the
 correct
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decision in that suit was founded on such proof, which is again, to some extent, given in the present suit. This proof consists of evidence of the land being let by Bhikam, first, to one Dhondú in 1842, and secondly to Lakhmá himself, who, in 1853, executed the agreement (*kabuláyat*, No. 19) * * * I find that *kabuláyat* to be proved.

“ This being the case, the question about the registry does not arise ; nor is it necessary to consider the posterior possession of the land by the plaintiff, and the entry of his name in the village accounts. All this seems, however, to be satisfactorily proved by the plaintiff.

“ On the fourth point no finding is requisite ; but I observe that in fact Bhikam’s deed is not registered, while Parabhúdas’s is registered ; and that by Reg. IX. of 1827, Sec. 6, the former is invalidated by the latter, as no proof of such knowledge on the part of Parabhúdas was given, as is required in the latter part of that section, cl. 1,—afterwards, viz., in 1843, repealed by another enactment,—posterior to the execution of the first deed, on which the former decree was founded.

“ At the time Lakhmá executed the deed to Parbhúdas, he, Lakhmá, having no right whatever to do so, he being a mere tenant of Bhikam, I find the Munsif’s decree to be right ; and affirm that decree, throwing the costs on the appellant.”

The case was heard before NEWTON and WARDEN, JJ.

Pándurang Balibhadra (with him *Shántáram Náráyan*), for the appellant :—The Assistant Judge was wrong in giving preference to the deed of the defendant, the same not being registered and accompanied with possession ; whereas that of the plaintiff was registered, and he had obtained possession under it. The rights obtained by registering documents are not, in the case of deeds of sale, confined to cases where they have not been carried into effect. The Assistant Judge has also erroneously admitted evidence given in a former suit, to which the applicant was not a party, in order to prove the opposite party’s possession under his deed of sale.

Ganesh Hari Patvardhan contra.

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NEWTON, J. :—The Assistant Judge has erred in holding that, under the Registration Act, preference should be given to the latter of two deeds of sale when registered, only if the earlier and unregistered deed of sale has not been carried into effect. By Act XIX. of 1843, any unregistered deed of sale is invalidated by a registered deed of sale for the same property : provided that the latter be authentic ; and this view of the enactment referred to has been taken by the Court in Special Appeal No. 4274 (a), and in other cases.

We reverse the decree of the Assistant Judge with costs ; and order that the field be made over to the special appellant.

Appeal allowed.

(a) 7 S. D. A. Dec. 357. *over-ruled like the above case.*

Special Appeal No. 835 of 1865.

1866.
April 23.

SAKHA'RA'M NARASIMHA SARDESA'I.....*Appellant.*
VITHU LAKHA' GOUDA', heir of Vithu Goudá,
and RA'MA, heir of Fattá Vith Goudá... *Respondents.*

Mortgage—Redemption before expiration of period.

Held that, by Hindú, as well as by English, law, in the absence of circumstances or language indicating a contrary intention, the mortgagor cannot, without the consent of the mortgagee, redeem before the expiration of the period named in the proviso for redemption ; the principle being that, in the absence of stipulation, express or implied, to the contrary, the right to redeem and the right to foreclose must be regarded as co-extensive.

THIS was a special appeal against the decision of W. H. Newnham, Acting Senior Assistant Judge of the Konkan at Ratnágiri, reversing the decree of the Munsif at Málvan.

The plaintiff alleged that his father, Narasimharáv, being the owner of a saltpan at the village of Shiravádá, by deed of the 11th of February 1829, mortgaged it, in consideration of Rs. 100, to Lakhá bin Goudá, for a term of sixteen years.