

*Special Appeal No. 267 of 1865.*

FAKÍRCHAND GOVINDRÁM.....*Appellant.*

KAHÁ'NDA'S BHAGVA'NDA'S .....*Respondent.*

*Certificate of Sale—Registration—Judicial process—Act XIX. of 1843—Reg. III. and IX. of 1827.*

*Held that a certificate of sale is not a document of such a character as to be entitled by law to priority, by virtue of its being registered, over an unregistered lease; but that it comes within the class of document described in Reg. IX. of 1827, Sec. III. cl. 2, as "judicial processes," which may at the option of the holder be registered, but the force and effect of which "is in no wise to depend on their being registered."*

THIS was a special appeal from the decision of A. L. Spens, Acting Senior Assistant Judge at Broach, in Appeal Suit No. 24 of 1864, reversing the decree of the Munsif of Hansot, in Original Suit No. 69 of 1862.

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The respondent, Kahándas, brought the suit against Govind Devá, to recover possession of some land situate in the village of Dartráí: alleging that it belonged to the holding of Gopál Shívdás, by whom it had been assigned to himself in satisfaction of a debt, payment of which was to be recovered from any profit derived in excess of the Government assessment; and that a deed was subsequently passed to him by Gopál's widow, as guardian of her infant son; that the land had been let by him, under two leases, bearing date respectively 8th July 1851 and 23rd July 1858, to the defendant, Govind, who now refused to pay rent or to give up the land.

Govind answered that he had relinquished part of the land, and that for the remainder he paid rent to Gopál as long as his interest existed, namely, up to Samvat 1817, and since then to Fakír Govindrám (the appellant), who purchased the land at an auction sale. He admitted having taken leases in 1907 and 1914 from Kahándas; but added that he had also taken a lease from Fakírchand Govindrám.

Fakírchand, having been made a defendant upon his own petition, answered that he was the purchaser of the land at a sale of Gopál's interest in it, made at the instance of his creditors; and that his right was recognised in a deed passed to him by Gopál's widow.

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Jairám Bhagván was also made a defendant by the court, as being in possession of that portion of the land relinquished by Govind Devá, to which he claimed to be entitled as purchaser at a sale by Gopál's creditors.

The Munsif of Hansot, holding Jairám's purchase not proved, awarded the land in his possession to the plaintiff; but rejected the claim as against Fakírchand, whose right he considered established.

The plaintiff, Kahándás, then appealed to the Senior Assistant Judge, who laid down the point at issue to be, whether the plaintiff's deed No. 3 was proved; and held that it was proved; and that as Govind acknowledged that he rented this land from the plaintiff, and paid rent to him up to Samvat 1917, he was bound either to give up the land, or continue to pay rent for it according to the terms of the agreement. He also found that Fakírchand never received possession of the land from the court ordering the sale, which took place in 1860; and that Gopál's widow, in collusion with Fakírchand, made over the land to him under a bond dated 17th July 1862, after Kahándás had filed his plaint in this suit. The Munsif's decree was accordingly amended by awarding the whole of the plaintiff's claim.

The special appeal first came before the court on the 23rd of August 1865; and was resumed for further hearing this day, before NEWTON and WARDEN, JJ.

*Dhirajál Mathurádás*, for the appellant, contended that the certificate of sale, which was the title-deed of Fakírchand, being registered, although subsequent in date, invalidated the unregistered deed put in by the respondent, under Reg. XI. of 1827, Sec. VI., and Act XIX. of 1843, Sec. II.

*Nánábhái Haridás*, for the respondent, contended that the certificate of sale put in by the appellant was not of the nature of the title-deeds specified in Reg. IX. of 1827, Sec. III., cl. I.; that the reversionary interest was all that was left in Gopál after the assignment, and this alone could have been purchased by the appellant. That the sale would have been void as affecting the rights of a party not before the

court; and registration of such a sale could not render it valid. [NEWTON, J. :—A certificate of sale appears to come within the class of documents specified in Reg. IX. of 1827, Sec. III., cl. 2.] It has already been held, in S. A. No. 350 of 1865, that a certificate of sale comes within the “judicial processes” mentioned in that clause.

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*Dhirajlal*, in reply, contended that the term “process” meant some proceeding issuing out of the court, and which the court could enforce; that the certificate of sale, as its name imports, merely served to show that a sale had taken place, and that a certain person was the purchaser.

NEWTON, J. :—The only question which calls for a decision in this case is, whether the certificate of sale, being registered, should, on that ground, be preferred to, and satisfied before, the deed set up by the respondent, which is held proved by the Judge, but is not registered. Since the adjournment of this case, the point has been decided in the special appeal cited by the respondent’s pleader, but we have considered the question independently of that ruling.

We cannot find any specific definition of the term “process” laid down in the Regulations of 1827. In Reg. III. of 1827, judicial processes are described as being *ordinary* and *extraordinary* (Secs. ix. and xi.); and under the head of ordinary process there is express mention made of orders and proclamations. The classes of documents there indicated appear indeed to include all those which ordinarily issue under the seal of the court and the signature of the Judge. And if the terms of the section (cl. 2, Sec. III., Reg. IX. of 1827) on which the decision of this case depends, be considered, it is similarly to be inferred that the term “process” has been used in a very comprehensive sense: for the judicial process there contemplated is of such a character as to affect the right or title to property; and decrees and awards are specified as examples. Within this language, such documents as the certificate of sale, now under consideration, appear to us to come; and under the terms “other judicial processes affecting the right or title to immoveable property”

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they follow in a very near relation to the decrees and awards there mentioned.

We are of opinion, therefore, that the certificate of sale relied on by the appellant, is not a document of such a character as to be entitled by law to any priority, by virtue of its being registered, over the unregistered lease set up by the respondent, and held established by the court below.

The decree must, therefore, be affirmed with costs.

*Decree affirmed.*

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*Special Appeal No. 57 of 1866.*

B. G. GURÁVI ..... *Appellant.*

V. L. GURÁVI and others ..... *Respondent.*

*Possession of land for thirty years—Reg. V. of 1827, Sec. 1.—Joint family—Separation—Fabrication of document.*

In a suit brought to recover a share in land alleged to be joint family property, where the defendants pleaded possession as proprietors for more than thirty years :—

*Held* that it was not necessary that actual separation should be proved ; but that it was enough to show that the defendants had been in uninterrupted possession for more than thirty years.

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**T**HIS was a special appeal from the decision of W. H. Newnham, Acting Senior Assistant Judge of the Konkan at Ratnágirí, in Appeal Suit No. 498 of 1864, reversing the decree of the Munsif of Málvan, in Original Suit No. 2554 of 1861.

Bháná Govind Gurávi brought the suit against Vithoji Ládoji Gurávi and four others, to recover possession of a fourth-share of a holding in Pendor village, which he alleged to be joint family property.

The defendants answered that the plaintiff had no share in the land ; and that he had not, for a longer period than thirty years, held any portion of it as proprietor, although he had been in occupation as tenant within that period.

The Munsif found it proved that the plaintiff was a member of the family, and that as such he had been in possession within thirty years ; and passed a decree in his favour.