

with possession. Here the deed of mortgage was registered. The following cases were cited: *Rambuggut v. Sudanundrao* (b); *Purshotum Runchord v. Juggivan Mayaram* (c); S. A. No. 364 of 1865; and S. A. No. 129 of 1866.

1867.
SUNDAR
JAGJIVAN
v.
GOPAL
ESHVANT.

No one appeared for the respondent.

PER CURIAM (COUCH, C.J., and WARDEN, J.):—The Court remands the case to the lower appellate court, for the Judge to try and determine whether the alleged mortgage was made to the plaintiff; and, if he shall so find, to pass a decree in favour of the plaintiff, who, as a registered mortgagee, although without possession, is entitled to priority over a subsequent purchaser; and the Court directs the costs to follow the final decision.

Suit remanded.

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Special Appeal No. 93 of 1867.

March 27.

GANPAT BAJA'SHET *Appellant.*
KHANDU CHA'UGSHET and others *Respondents.*

Mortgage—Registration—Purchase—Priority.

Held that an unregistered mortgage without possession is not valid against a purchaser with possession.

THIS was a special appeal from the decision of S. H. Phillips, Acting Assistant Judge of the Konkan District, in Appeal Suit No. 322 of 1866, reversing the decree of the Munsif at Alibág, in Original Suit No. 436 of 1866.

Ganpat sued to recover Rs. 148, the balance of a mortgage bond, from certain property in the possession of the defendant Tulsidás, which had been mortgaged to him (17th January 1863) before it was sold (20th January 1865) by the defendants Khandu and Lakshmi to the defendant Tulsidás. The deed of sale was registered. The mortgage was not registered.

Amrit Shripat, Munsif at Alibág, awarded the claim: holding that the defendant Tulsidás bought the property in question burdened with the plaintiff's lien as mortgagee over it.

(b) Bellasis, Rep. 9.

(c) 1 Bom. H. C. Rep. 60.

1867.

GANPAT
BAJA'SHET
v.
KHANDU
CHA'UGSHET
et al.

On appeal, the Acting Assistant Judge reversed the Munsif's decree, on the ground that a mortgage without possession was invalid against a purchaser with possession: S. A. Nos. 23 and 75 of 1861. (a)

Dhirajlál Mathurádás, for the appellant, contended that the old Registration Law simply gave priority to registered documents; but left it entirely to the option of the parties to register their documents. The plaintiff, in consequence of his not having registered the mortgaged deed, could not be prevented from charging the property in question with his lien.

Bhairavanáth Mangesh, for the respondent, besides the cases referred to by the Assistant Judge, cited S. A. No. 970 of 1864, and S. A. No. 85 of 1865.

COUCH, C.J.:—The Acting Assistant Judge was right in holding that an unregistered mortgage without possession was not valid against a purchaser with possession.

We therefore affirm his decree with costs.

WARDEN, J., concurred.

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Special Appeal No. 528 of 1866.

April 10.

SA'KALCHAND SAVA'ICHAND.....*Appellant.*
DAYA'BHA'I ICHHA'CHAND*Respondent.*

Gift of land—Permissive occupancy—Title.

A donee, under a deed of gift, brought a suit to recover a piece of land which, he alleged, his donors had given for a temporary purpose to the defendant in possession six years before; and the Munsif found that it was so, and allowed the claim. But the District Judge, in appeal, considering that the plaintiff had failed to prove his donors' title to the land, reversed the Munsif's decree.

Held that the Judge was in error in requiring the plaintiff to establish the title of the donors, without inquiring whether the defendant had obtained possession merely by their permission; and that the suit must be remanded for a finding by the District Judge on that point.

THIS was a Special Appeal from the decision of C. G. Kemball, Acting Judge of the Súrat District, in Appeal Suit No. 80 of 1866, reversing the decree of the Munsif of Súrat in Original Suit No. 1433 of 1865.

(a) 8 Bom. S. D. A. Dec., pp. 189 and 246.