

Special Appeal No. 194 of 1866.

1867.
Dec. 10.

U'MA'JI valad MA'NA'JI PA'TI'L DUMA'LE... *Appellant.*
HARI RA'MCHANDRA KULKARNI'..... *Respondent.*

Hindú Law—Mortgage—Possession—Registration—Priority.

H. and U. were mortgagees of one V. U.'s mortgage was prior in point of time and registered. H. and U. obtained each a decree against V. U.'s decree was prior; but H., having applied for execution sooner, was put into possession. U. subsequently applied for execution and dispossessed H.

Held, in a suit by H. against U. to recover possession of the mortgaged premises, that registration made U.'s mortgage complete, though he did not obtain possession of the mortgaged property at the time when the deed to him was executed, and that any subsequent disposition of the equity of redemption by the mortgagor would be subject to his mortgage.

THIS was a Special Appeal against the decision of A. St.

John Richardson, Judge of the district of Ahmednagar, reversing the decree of the Munsif of Ráhuri.

• The facts sufficiently appear in the judgment of

TUCKER, J.:—The plaintiff, Hari Rámchandra, brought this action to recover possession of a field of which he asserted that he had been wrongfully dispossessed by the defendant, U'máji.

The field was originally the property of one Viṭhú, who mortgaged it on the 10th of December 1860 to the defendant, U'máji, for Rs. 99-11-0, which deed was registered on the 14th of December 1860. He (Viṭhú) then mortgaged the same field to Hari on the 19th of October 1861 for Rs. 13. This deed has not been recorded, and it is not alleged to have been registered. The defendant, U'máji, brought a suit against the mortgagor, and obtained a decree on the 27th of January 1863 for the possession of the property, which he took no immediate steps to execute; and the plaintiff, Hari, obtained a similar decree against the mortgagor on the 10th of February 1863, which he executed on the 29th of February 1863, on which date the field was delivered into his possession by the civil court. Afterwards, in May 1864, the defendant, U'máji, applied for execution of his prior decree, and in execution of that decree Hari was

1867.

U'MAJI

M. P.

DUMALE

v.

HARI R.
KULKARNI.

dispossessed on the 17th of May 1864, which caused him to institute the present suit.

The Munsif of Ráhuri held that the defendant, U'máji, had rightly been put in possession of the field in dispute under his decree against Vithú, as Hari was only in possession under Vithú; and he therefore threw out the plaintiff's claim.

The District Judge reversed this decision, and awarded the field to the plaintiff, Hari, as he held that Hari having obtained a decree declaring his right to the field, and having been put in possession by the Civil Court, he could not properly be dispossessed by the defendant, U'máji, notwithstanding that the latter had a prior decree against the same property.

We are of opinion that the decision of the Munsif was correct, while that of the District Judge was erroneous. Both parties were only mortgagees, and the defendant U'máji's mortgage being prior in point of time and registered, he was entitled to have possession of the mortgaged property till his claim should be satisfied; and in execution of his decree, which was also prior in point of time to the decree of the plaintiff, he would be entitled to dispossess the plaintiff, Hari, who had got in possession under a subsequent unregistered mortgage; and it appears to us immaterial whether the plaintiff had obtained his possession through a decree of a Civil Court, or in any other manner. The first mortgagee being thus in possession, the puisne mortgagee could not bring an action to recover the field without paying off the prior incumbrance; and as there is no offer to redeem in his present plaint, the plaintiff's claim must be rejected. Registration made the defendant's mortgage complete, though he did not obtain possession of the property mortgaged at the time the deed to him was executed, and any subsequent disposition of the equity of redemption by the mortgagor would be subject to the first mortgagee's lien. We therefore reverse the decree of the District Judge, and affirm the decree of the Munsif. All costs on the special respondent.

GIBBS, J., concurred.

District Judge's decree reversed, and the Munsif's confirmed.