

Special Appeal No. 43 of 1868.

BHIMA' valad KRISHNA' PPA' *et al.*.....*Appellants.*
 NINGA' PPA' bin SHIDA' PPA' TUSE.....*Respondent.*

1868.
 March 20.

Agreement to avoid litigation—Consideration.

A mutual agreement to avoid further litigation is not an agreement void of consideration.

THIS was a Special Appeal from the decision in review of R. W. Hunter, Senior Assistant Judge at Solápúr, in Appeal No. 135 of 1866, reversing the decree of the Şadr Amín of Solápúr.

The plaintiff sued to cause the removal of seven water-pipes, attached to the defendant's house, from which, he alleged, the water flowed on to his (plaintiff's) premises, and to obtain an injunction restraining the defendants from interfering with the plaintiff's building a new house on his own ground.

The defendants, as to the water-pipes, set up a prescriptive title, extending over more than thirty years, and asserted that the plaintiff's new house would interfere with their water-pipes.

The Şadr Amín threw out the claim of the plaintiff for the removal of the water-pipes, but directed that he might build his new house so as not to interfere with them.

The Senior Assistant Judge reversed the decision of the Şadr Amín, and directed that the defendants should remove four of the water-pipes attached to the defendant's western wall that discharged water on to the plaintiff's building, but that the three others might remain, and that the defendants should not obstruct the plaintiff in building his house, provided he built in such a manner as not to injure the defendant's western wall.

The original defendants then applied to the Senior Assistant Judge to review his own decision. They produced an agreement passed to them by the plaintiff, and alleged that the decision was not in accordance with that agreement.

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The Senior Assistant Judge found that there was no consideration stated on the face of the agreement, and that it was entered into merely to avoid litigation.

The case was argued before WARDEN and GIBBS, JJ.

Shántarám Náráyan contended, on behalf of the special appellant, that an agreement entered into between the parties could not be said to be without any consideration; for the avoiding of litigation was in itself a good consideration.

Bhairavanáth Mangesh for the respondent.

PER CURIAM:—The Court find that the Senior Assistant Judge has erred in holding the agreement No. 11, in appeal, invalid for want of consideration, it having been mutually entered into by the parties with a view to avoid further litigation. The Court considers it ought to be upheld, and, therefore, reverses his decision, and passes a decree in accordance with the terms of the said agreement.

Decree reversed.

April 21.

Special Appeal No. 78 of 1868.

NATHU' SADA'SHIV.....Appellant.
 RA'MOHANDRA. ANNA'JIRespondent.

Civ. Proc. Code, Sec. 246—Onus of Proof—Ejectment.

Where the plaintiff filed a suit to set aside a sale of land after he had been unsuccessful in an application made under Sec. 246 of the Civil Procedure Code to raise an attachment that had been laid on such land:

Held that the *onus* lay on the plaintiff to prove his title, and not on the purchaser to prove that of the judgment debtor.

THIS was a special appeal from the decision of A. Lyon, Assistant Judge of the Konkan District, in Appeal Suit No. 145 of 1867, confirming the decision of the *Munif* of Bhivandi.

Harjivan obtained a decree against one Vithu, and in