

1868.  
 BHIMA'  
 KRISHNA'PPA'  
 et al.  
 v.  
 NINGA'PPA'  
 SHIDA'PPA'  
 TUSE.

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'JI .....Respondent.

*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

execution thereof attached a piece of land. The plaintiff applied, under Sec. 246 of the Civil Procedure Code, to raise the attachment, but being unsuccessful the land was sold. The defendant, Rámchandra, became the purchaser, and was put in possession. The plaintiff, therefore, brought this regular suit against the purchaser.

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The Judge, considering that the *onus* of proving his title lay upon the plaintiff, and that he had not succeeded in doing so, passed a decree for the defendant.

The appeal was argued before WARDEN and GIBBS, JJ.

*Shántárám Náráyan*, for the special appellant:—The *onus* of proof has been wrongly thrown. It has been uniformly decided by the late Śadr Adálat that although the claim to attached property be rejected, still in the event of dis-possession and a suit following, the person causing dis-possession has to prove the title of the judgment-debtor: *Ningapa bin Rachapa v. Bhowray Punvutee* (a). The Assistant Judge has put a wrong construction upon Sec. 246 of the Code of Civil Procedure, in holding that it directs how the parties are to be ranked, and thus indicates how the *onus* of proof is to be placed.

*Dhīrajál Mathurádás* for the respondent.

PER CURIAM:—It is true that the late Śadr Adálat threw the *onus* on the decree-holder, but later decisions of the High Court have gone the other way. We consider that the *onus* is on the plaintiff, the party dispossessed, and, therefore, confirm the decree of the Assistant Judge, with costs.

*Decree affirmed.*

(a) 8 Harrington S. D. A. 293.