

*Referred Case.*1870.  
Jan. 18.

GIRDHAR DALPAT ..... *Plaintiff.*  
 HARIBHA'I NA'RA'YAN..... *Defendant.*

*Registration—Refusal to get Instrument registered—Implied Contract—  
 Right of Suit.*

Whether an action will lie against the maker of an instrument requiring registration to render it valid, for a refusal to get such instrument registered, depends upon the question whether there is a contract, express or implied, on the part of the maker to register it. Such a contract is not to be implied in every case.

CASE referred for the opinion of the High Court by Ráv Bahádur Gopákráv Hari Deshmukh, Judge of the Court of Small Causes at Ahmedábád, under Sec. 22 of Act XI. of 1865.

“The plaintiff brought an action for damages against the defendant for default in not duly registering a bond which the defendant had passed to the plaintiff for an old book-debt, in which bond the defendant had mortgaged a house as security for the debt. The plaintiff says he asked the defendant to accompany him to the Registration Office, and that the defendant promised to come, but put it off till the four months' time prescribed had elapsed.

“The defendant says that the plaintiff took away the bond and neglected to register it. Further, that the plaintiff had a right to present it himself at the Registration Office, and summon the defendant; and, not having done so, the plaintiff could not now sue him, the defendant, for damages.

“The evidence shows that the plaintiff asked the defendant to accompany him, but that the defendant put off doing so till the four months' period had expired. The plaintiff did not present it himself at the office, though he could have done it, and the bond remained in his hand unregistered. Before bringing his present suit, the plaintiff sued the defendant on the entries in his books, when it was decided that the claim, dating from the entries, was time-barred.

“The question for the opinion of the High Court is, whether or not a claim for damages, alleged to be incurred by the

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plaintiff in consequence of a bond which he obtained from the defendant not being duly registered, is maintainable.

"I am of opinion that the claim is maintainable. The Calcutta High Court has decided that a defendant who executed a bond was bound to get it registered, so as to enable the plaintiff to enforce it: *Probooram Hajrah v. Robinson (a)*."

The reference was considered by COUCH, C. J., and MELVILL, J.

PER CURIAM :—The Court is of opinion that the suit is not maintainable. There is no agreement in the bond that the mortgagor will get it registered, and there is no implied contract on his part to do so, as there was in the Calcutta case quoted by the Judge.

(a) 11 Calc. W. Rep., Civ. R. 398.

Feb. 2.

*Special Appeal No. 532 of 1869.*

GIRDHAR PARJA'RA'M ..... *Appellant.*  
DA'JI DULABHRA'M and MOTI DULABH-  
RA'M ..... *Respondents.*

*Hindú Law—Sale of Land—Possession.*

Though, by Hindú law, on a sale of land it is not absolutely necessary that the purchaser should be put in possession, it is requisite that the vendor should, at the time of sale, be in possession of the property sold.

THIS was a Special Appeal from the decision of E. T. Candy, Acting Assistant Judge at Ahmedábád, in Appeal Suit No. 57 of 1867, confirming the decree of the Sadr Amin.

The plaintiff, Girdhar Parjúrám, brought this suit to compel the defendants to pull down a partition wall, which they had built between their property and the plaintiff's, and to restore certain ground which they had encroached upon. The plaintiff alleged that he had purchased the ground from one Gavrishankar, the original proprietor, by a deed of