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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

sale, dated the 28th of June 1864. The deed of sale did not contain the measurement of the ground sold.

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The defendants answered that the partition wall had been built before the plaintiff purchased the house, and that they had not encroached upon the plaintiff's ground.

The Şadr Amín found that the defendants had erected the partition wall and made the alleged encroachments in January 1866, while the plaintiff's deed of purchase bore date the 28th of June 1866; and that, as the partition wall was built before the plaintiff bought the house, his claim would not lie against the defendants.

The plaintiff appealed from this decision to the District Court. The Acting Assistant Judge gave the following judgment:—

“I find that the plaintiff's claim will not lie against the defendants.

“I take it as proved that the plaintiff bought the house and land in question after the supposed encroachments were made.

“The plaintiff sues to recover part of a house which was sold to him according to measurements noted in a former bond, which bond is not before this court, and therefore it cannot be ascertained what the plaintiff bought.

“If, after entering upon possession, the plaintiff found that the limits of the house were not according to the deed of sale, surely his remedy would lie against the seller; and then, when the seller pleaded that he was no party to the encroachment, the present defendants would be joined as co-defendants with the seller. The seller could never be joined as a co-plaintiff. Under any circumstances, the claim of the plaintiff will not lie against the present defendants alone.”

The appeal was this day heard before COUCH, C.J., and MELVILL, J.

Shântárám Náráyan for the appellant.

Nánábhái Haridás for the respondents.

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COUCH, C.J. :—Although, according to Hindú law, transfer of possession is not essentially necessary to give validity to a sale of immoveable property, yet it is essential that the vendor should have possession at the date of the sale. In a case decided by the Privy Council, their lordships are reported to have made the following observations :—“They” (the Judges of the Šadr Diváni Adálat) “seem to have ruled that the effect of the execution of a bill of sale by a Hindú vendor is, to use the phraseology of English law, to pass an estate irrespectively of actual delivery of possession, giving to the instrument the effect of a conveyance operating by the statute of uses. Whether such a conclusion would be warranted in any case is, in their lordships’ opinion, very questionable. It is certainly not supported by the two cases, *Gopeechurn Kur v. Koroona Dabee (a)* and *Surbonarayan Sing v. Maharaj Sing (b)*, cited in the judgment under review, in both of which actual possession seems to have passed from the vendor to the purchaser. To support it, the execution of the bill of sale must be treated as a constructive transfer of possession. But how can there be any such transfer, actual or constructive, upon a contract under which the vendor sells that of which he has not possession, and to which he may never establish his title? The bill of sale in such a case can only be evidence of a contract to be performed *in futuro*, and upon the happening of a contingency; of which the purchaser may claim a specific performance if he comes into court showing that he has himself done all that he was bound to do” (c). This is exactly the present case. The vendor could not sell property of which he had been dispossessed at the date of the sale. The sale, under such circumstances, could only, at the utmost, give a right to sue for the land of which the vendor had been dispossessed. The remedy open to the plaintiff, if he did not get all that was bargained for, was to sue the vendor for damages. This case, however, can be disposed of upon the first ground of the Assistant

(a) S. D. R. 1859, 225. (b) S. D. R. 1858, 101.

(c) *Rajah Sahib Prahlad Sen v. Baboo Budhu Sing*, 2 Beng. L. R., P. C. Ca. 111, 117.

Judge's judgment. The plaintiff has given no evidence to show what was the extent of the land which the deed of sale purported to transfer to him. There is nothing to prove that the old boundaries included the site under dispute, as the old sale-deed is not in court, and no reason is given why it was not produced in the court below. The plaintiff was bound to make out a complete ground for ejectment, by showing the precise limits of the land sold to him; and he has failed to do this. We accordingly confirm the decree of the lower court with costs.

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Decree confirmed with costs.



Referred Case.

Feb. 16.

MAGANBHAI PURSHOTAMDA'S, a minor, by
DVA'RKA'DA'S KAHANDA'S, agent of Gir-
dharlal Likandas, administrator of
the minor's estate *Plaintiff.*
VITHOBA' bin NA'RA'YAN SHET *Defendant.*

*Procedure—Minor—Certificate of Guardianship—Foreign Guardian—
Act XX. of 1864—Suing by next Friend.*

The Bombay Minors' Act (XX. of 1864) does not apply to minors who are not resident within the Presidency of Bombay.

A foreign guardian will not be recognised in the courts in this country in a suit brought by such guardian to recover, on account of a minor, profits arising from immoveable property.

Where a suit was brought by the agent of a minor's guardian appointed by H. H. the Gaikwad of Baroda, it was ordered that the proceedings should be amended by describing such agent as the next friend of the minor, in which capacity he was then permitted to sue.

CASE referred for the opinion of the High Court by Janardan Vasudevji, Judge of the Court of Small Causes at Poona, under Act XI. of 1865, Sec. 22.

"The suit, No. 3054 of 1869, has been brought, to recover from the defendant the rent of a house situated in Aditvar Peth of Poona, by Girdharlal Likandas' as administrator of the estate of a minor, Maganbhai Purshotandas, heir of