

1870.  
 UJI  
 et al.  
 v.  
 HATHI LALU.

“The Pleader for the defendants has referred to another Crown Case, reported in Bombay High Court Reports, Vol. V., p. 17 (b); but the ruling in that case does not apply to the present case.

“I find, then, that the custom, even if proved, is invalid.

“No finding is required on the third point at issue.”

The special appeal was heard before LLOYD and KEMBALL, JJ.

*Dhirajlal Mathuradas*, Government Pleader, for the special appellants.

*Nanabhái Haridas* for the special respondent.

PER CURIAM :—It has not been shown to us that the Judge has, as alleged, misconstrued the document exhibit No. 37; for, with the explanation now attempted by the appellants' *vakil*, we do not find that it professes to go to the extent argued, and authorises a woman to contract a *nátrá* marriage without a divorce on payment of a certain sum to the caste, but, even admitting that it does go as far as this, we are of opinion that it is an immoral custom, which should not be recognised judicially, and that, therefore, the lower courts were right in their decision in favour of the plaintiff.

*Decree confirmed with costs.*

Dec. 22.

*Special Appeal No. 277 of 1870.*

MULJI BECHAR *et al.* ..... *Appellants.*  
 ANUPRA'M BECHAR..... *Respondent.*

*Certificate of Sale—Registration—Admission—Traverse.*

A certificate of sale of immoveable property of the value of more than one hundred rupees must be registered, and the fact of sale cannot be proved except by the production of such certificate.

The mere fact that an allegation is not traversed does not relieve a plaintiff from the burden of proving his case.

THIS was a special appeal from the decision of E. T. Candy, Acting Assistant Judge at Ahmedábád, in Appeal Suit No. 352 of 1869, reversing the decree of the Subordinate Judge of Neriad.

(b) *Reg. v. Manohar Raiji.*

The special appeal was argued before LLOYD and KEMBALL, JJ., on the 11th of November 1870.

1870.  
MULJI BECHAR  
et al.  
v.  
ANUPRÁM  
BECHAR.

*Shántáram Náráyan* appeared for the appellants.

*Nánábhái Haridás* appeared for the respondent.

The facts, in so far as they are material, sufficiently appear from the following judgment:—

LLOYD, J. :—In this case Anuprám Bechar sued for possession of certain land purchased by him at a court's sale. The claim was thrown out by the Subordinate Judge of Neriad, because the certificate of sale was not registered. On appeal, however, the Assistant Judge of Ahmedábád held that though the certificate of sale affected immoveable property of more than one hundred rupees in value, and was, therefore, inadmissible in evidence by reason of its not having been registered, it was competent to the plaintiff to prove his purchase by other evidence; but, the fact of the sale not having been disputed, the necessity to do so did not arise; and as the land was the property of the party, in virtue of a decree against whom it had been sold, the plaintiff was entitled to possession. He, therefore, reversed the decision of the Subordinate Judge, and decreed for the plaintiff.

The issues which this Court has to determine are (1) whether the plaintiff is relieved of the burden of proving the sale; and, if not, (2) can the plaintiff prove the sale otherwise than by production of the certificate of sale.

Now no direct admission of the sale has been pointed out to us, and the mere fact that an allegation is not traversed does not, as has been held by the Privy Council, and also by this court, relieve a plaintiff of the *onus* of proving his case.

With regard to the second question, the only construction to be placed on Sec. 259 of the Code of Civil Procedure is that no valid transfer of the right, title, and interest of a defendant in the property sold is made until the court ordering the sale has granted a certificate; and as such certificate in a case like the present is inadmissible unless registered, to rule that the sale can be proved by other evidence would be

1870. to defeat the purpose for which the Registration Law was  
 MULJI BECHAR enacted.  
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v.  
 ANUPRA'M Both issues must be decided in the negative; and the  
 BECHAR. decree of the lower appellate court reversed, and that of the  
 Subordinate Judge upheld.

Costs throughout on special respondent.

*Decree of lower appellate court reversed, and that  
 of the Subordinate Judge confirmed.*

March 2.

*Miscellaneous Appeal No. 8 of 1869.*

CHANBASA'PPA' bin SANGA'PPA' et al. ....Appellants.  
 MAINA'BA' bin MAHA'DSHET' .....Respondent.

*Practice—Ex parte Decree—Service of Summons—Summons not served  
 in time.*

Where an *ex parte* decree was passed against the defendant and it appeared that the writ of summons had not been served upon him in sufficient time to enable him to appear and answer, the appellate Court, reversing the order of the court of first instance, directed the *ex parte* decree to be set aside and ordered a new trial.

*Quære* whether the affixing of a summons to the outer door of the place of business of a defendant is good service upon him under Sec. 55 of the Code of Civil Procedure.

**T**HIS was an appeal from an order passed by the First Class Subordinate Judge at Puñá rejecting an application made by the defendants to set aside an *ex parte* judgment passed against them in Suit No. 168 of 1869.

The Subordinate Judge of the First Class at Puñá, in rejecting the application, recorded the following observations:—

“From the endorsement on the back of the summons, it appears that it was served on the 17th of April by fixing a copy thereof on the outer door of the defendants’ place of business at Puñá. The summons was served on the 17th, and the hearing of the suit was fixed for the 19th of April.

“There was, therefore, sufficient time for the defendants’ men in their new shop at Puñá to communicate with the defendants by telegram, and for the defendants to come here and