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Being, therefore, of opinion that we are justified by law in interfering with the order of the Subordinate Judge, if the defendants' application was made to him after the period allowed by law had expired, we have only to consider whether the application was so made. On this point we see no room for doubt. The Calcutta High Court has decided that the words "any process" in Sec. 119 mean the *first* process, issued against the defendant or his property: *Shaikh Gholam v. Shamsoundur Koonwaree (k)*; *Shib Chunder Bhadooree v. Luckee Debia Chowdhraïn (l)*; *Radha Binode Chowdhry v. Digamburee Dossee (m)*. We see no reason to dissent from these judgments; and, interpreting the section in this manner, we find that Rámchandra's application was made long after the expiration of the period allowed by law, and, therefore, that the Subordinate Judge had not any jurisdiction to entertain it, or to make the order which he did make, and which the District Judge—erroneously, as we think—affirmed.

For these reasons the orders of the courts below, admitting Rámchandra's application, are reversed, and the original decree of the Subordinate Judge is restored.

*Order accordingly.*

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*Special Appeal No. 202 of 1866.*

HARI RA'MCHANDRA ..... *Appellant.*  
 MAHA'DA'JI VISHNU ..... *Respondent.*

*Mortgage without Possession in the Konkan—Possession—Registration.*

A mortgage in the Konkan without possession is invalid as against a subsequent mortgagee with possession, but the registration of such a mortgage cures any defect or imperfection arising from the non-completion of the transaction by delivery of possession; and a deed so registered is good against a non-registered mortgage though accompanied by possession. Previous cases reviewed.

THIS was a special appeal from the decision of W. M. P. Coghlan, Acting Joint Judge of the Konkan at Ratná-

(k) 7 Calc. W. Rep., Civ. R. 375. (l) 6 Calc. W. Rep., Misc. R. 51.

(m) 9 Calc. W. Rep., Civ. R. 236.

girl, in Appeal Suit No. 144 of 1865, reversing the decree of the Munsif of Rájápur.

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The special appeal was argued, on the 10th of August 1866, before TUCKER and GIBBS, JJ.

*Dhirajál Mathurádás* for the appellant.

*Bahiravnáth Mangesh* for the respondent.

The judgment of the Court was delivered on the 10th of December 1867.

GIBBS, J. :—The plaintiff, Hari Rámchandra, brought this action to recover two-thirds of four fields which originally belonged to one Bhikáji Bacháji, whose interest he had purchased at a sale by a civil court, but which the defendant refused to surrender, on account of an alleged collusive mortgage.

The defence set up was that the mortgage was a *boná fide* transaction made previous to the sale, and that the mortgagee's lien must be paid off before the purchaser of the mortgagor's interest could obtain possession of the land.

The Munsif of Rájápur decreed that the plaintiff should recover the land on payment to the defendant of Rupees 1,461-9-0, with interest at the rate agreed upon.

The plaintiff, in appeal to the Joint Judge at Ratnágirí, urged that the mortgage was colourable only, and not made in good faith, and that it was invalid under Hindú law, owing to possession not having been given to the mortgagee. The Joint Judge (Mr. Coghlan) held that the mortgage was *boná fide*, and was not proved to have been completed by possession, but that it had long been decided that possession was not necessary to the validity of a mortgage in the Konkan, any more than in Gujarát, and that, consequently, the plaintiff could not recover the land without satisfying the claim of the mortgagee; but as his plea was not to redeem, the Joint Judge varied the Munsif's decree, and rejected the claim altogether.

In special appeal it has been contended for the special appellant that, under the recent rulings of the High Court,

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which followed the precedents established by the late Court of Sadr Adálat, it had been held that in the Dakhan and in the Konkan possession was necessary, under Hindú law, to make a valid mortgage. A mortgage without possession would give no right against a subsequent mortgagee or purchaser with possession. The special appellant cites 2 Borradaile, page 147 (edn. of 1863), case 23; Frere, Selected Decisions S. D. A., page 187, case 39; Bellasis, Selected Decisions S.D.A., page 5, No. 1362; Morris, Selected Decisions, Part II., page 105; *Ibid.*, Part I., page 56, No. 2757; Harrington's Rep., Vol. VIII., page 189, No. 23 of 1861 (Konkan); *Ibid.*, p. 193, No. 24 of 1861 (Khándesh); Harrington's Rep., Vol. IX., page 499, No. 24 of 1860 (Southern Maráthá Country); S. A. No. 85 of 1865 (Couch, Tucker, and Warden, JJ.), Konkan (unreported); S. A. No. 970 of 1864 (Couch, Newton, and Warden, JJ.), Dakhan (unreported).

On the other hand, it has been urged for the special respondent that the mortgage in this case was registered, and that, therefore, it would be complete and effectual without possession, and create a lien against any subsequent purchaser of the mortgagor's interest: *Ram Buggut and another v. Sadanundrao Juggurnath (a)*.

We have taken time to consider our judgment in this case in order that we might review the authorities on the two questions which are raised in this special appeal, and, after examining all the decisions both reported and unreported which have been brought to our notice, we have come to the conclusion that the Acting Joint Judge was wrong in declaring that "it has long ago been decided that possession by a mortgagee is not necessary to a mortgage here" (*i.e.*, in the South Konkan) "any more than in Gujarát," but that the decision which he ultimately came to was right, inasmuch as the deed of mortgage on which the defendant relies in this instance being registered, the defect which, under Hindú law, existed in the mortgagee's title, owing to the non-transfer of possession, was cured.

(a) Bellasis, Selected Decisions, p. 9, Case 1564.

The earliest decision on the subject of mortgages in the Mofussil of this Presidency is to be found in the case of *Teoljaram Atmaram v. Mean Moolhumud and another (b)*, in which it was held that, both under Hindú and Muhammadan law, possession was necessary to complete a mortgage, and that a mortgagee with possession was entitled to a preference over a mortgagee whose mortgage originated in a deed of prior date but who had never obtained possession. This decision was made in 1821, and the ruling was upheld in 1836 in the case of *Mahomed Khan v. Kerojee and Morajee (c)*, also in the case of *Khundojee Hybutrao v. Balajee Dennanath (d)*, also *Dondee and Nana v. Suntram (e)*.

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In the case of *Govurdhun Doolubdas v. Sukharam Ramchunder (f)* the Full Court held that in the Konkan a mortgage without possession is invalid as against a purchaser with possession, though, the Court observes, it would not be so in Gujarát.

The same doctrine was upheld in the case of *Chuttrajee Dullajee v. Krishna (g)*, which was an appeal from the District Court in Khándesh.

In a later case (*h*), which came from the Dharwár district, a similar decision was arrived at. This concludes the authorities decided by the late Şadr Diváni Adálat.

Since the establishment of the High Court we find the doctrine upheld that possession was necessary to complete a non-registered mortgage in the Dakhan (*i*), while a similar decision with reference to the Konkan was arrived at by nearly the same Bench (*j*).

(b) 2 Borr., p. 147, Case 23.

(c) Frere's Selected Decisions S.D.A., p. 187, Case No. 39.

(d) Bellasis' Rep., p. 5. (e) Morris, Selected Decisions, Part I, p. 56.

(f) 8 Harrington, Rep. 189, S. A. No. 23 of 1861.

(g) 8 *Ibid.* 193, S. A. No. 24 of 1861.

(h) 9 *Ibid.* 499, S. A. No. 24 of 1860.

(i) S. A. No. 970 of 1864, decided on the 18th of February 1865 by Couch, Newton, and Warden, JJ.

(j) S. A. No. 85 of 1865, decided on the 12th of April 1865 by Couch, Tucker, and Warden, JJ.

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The above precedents show clearly that the Joint Judge was in error in holding that in the Konkan possession was not necessary to complete a mortgage; the only case which appears to the contrary is that of *Giriapa bin Hunmapa v. Nursapa Dewtee (k)*, but, the facts of the case having been gone into, it appears that the decision only goes thus far, that possession by a tenant suffices. We have not quoted Gujarát cases, as they do not affect the present decision.

We now come to the precedents regarding the effects of registration, and the first case is that of *Rambuggut v. Sudanundrao (l)*, in which it was held by the Full Court that a mortgage without possession when registered took precedence of a non-registered mortgage with possession; and in the case of *Govind Narayun v. Guneshrum (m)* the Full Court upheld a subsequently registered mortgage against a prior unregistered mortgage on which a decree had been obtained; the High Court also held that a registered *miráspatra* was entitled to preference over an unregistered deed of a similar nature: *Harnamgir v. Spiers (n)*. There are many other cases in which registration has been held to make a mortgage complete, whether accompanied by possession or not; and we, therefore, consider that we are only carrying out the views of the late Šadr and the present High Courts by holding in the present case that in the Konkan the registration of a mortgage without possession cures any defect or imperfection which arose from the non-completion of the transaction by delivery of possession, and that a deed so registered must be held good against a non-registered mortgage.

For these reasons we confirm the Joint Judge's decree with costs.

*Decree confirmed with costs.*

(k) Morris, Selected Decisions, Part I., p. 96, S. A. No. 2972.

(l) Bellasis, Rep. 9, S. A. No. 1564.

(m) Morris, Selected Dec., Part III., p. 13, S. A. No. 3170.

(n) 2 Bom. H. C. Rep. 204. (2nd edn.)