

to the suit between the respondent and the mortgagor, so that the titles of all the parties might be simultaneously determined; or, if the decree had been already passed in favour of the respondent, he would have forborne to execute it until the suit between the appellant and the mortgagor had been decided. An alienation made by a defendant *pendente lite* is no more valid, because made under an order of court issued under a misapprehension of which he was the wilful cause, than it could have been if it had been made voluntarily.

1871.
KRISHNA'PPA'
MAHA'DA'PPA'
v.
BAHIRU
YA'DAVRA'V.

On these grounds we shall adhere to our former decision, reversing the decree of the Senior Assistant Judge, and restoring that of the court of first instance.

Decree reversed.

Special Appeal No. 455 of 1870.

April 13.

GOKALBHA'I MULCHAND *et al.* *Appellants.*

JHAVER CHATURBHUIJ *at al.* *Respondents.*

Mortgage—Limitation.

In 1848 a *sán* mortgage was executed to the plaintiffs; in 1850 the plaintiffs obtained a personal decree against the mortgagor; in 1857 this decree was modified in appeal, and the claim was allowed against the mortgaged property. In 1854 the mortgaged property was sold to the defendants at a sale held by a Civil Court in execution of a decree obtained against the mortgagor by a third party, and possession was made over to them. In 1866 the plaintiffs applied for execution of the decree obtained by them in 1857, and attached the mortgaged property in the hands of the defendants. The defendants then came in under Sec. 246 of the Code of Civil Procedure, and the attachment was raised on the 26th of July 1866; and the plaintiffs within one year from that day sued to have their debt satisfied out of the mortgaged property.

Held that the plaintiffs' claim (they not having sued the present defendants within twelve years from the date of the mortgage or of the sale to the defendants) was barred by the law of limitation, Act XIV. of 1859, Sec. I., cl. 12.

THIS was a special appeal from the decision of M. H. Scott, Extra Assistant Judge at Ahmedábád, in Appeal Suit No. 146 of 1867, confirming the decree of the Şadr Amín of Dhandhuká.

1871.
 GOKALBHAI
 MULCHAND
et al.
 v.
 JHAVER
 CHATURHUJ
et al.

One Trikam Pujá mortgaged a house in *sán* (without possession) to the plaintiffs. The mortgage-deed bore date the 4th of May 1848. In 1850 the plaintiffs sued the mortgagee to recover the sum lent on mortgage, and obtained a decree against him personally. From this decree the plaintiffs appealed, and on the 7th of February 1857 the appellate court gave a decree declaring the mortgaged property subject to the debt. In the meantime the property had been put up to auction by the civil court, in execution of a decree obtained by one Chhagan Bhagubháí against the mortgagor, Trikam. The present defendants, having purchased the property, were put in possession, and have ever since remained in possession. The plaintiffs did not apply for execution of their decree till some time in 1866, in the commencement of which year they made their application, and the property was attached. The defendants objected under Sec. 246 of the Code of Civil Procedure, and, the objection having been allowed, the attachment was raised on the 25th of July 1866. The plaintiffs, therefore, within one year from that day, brought this present suit to have their debt satisfied from the mortgaged property.

The Šadr Amín upon these facts gave a decree for the plaintiffs, and the appellate court confirmed that decree.

The special appeal was heard before GIBBS and MELVILL, JJ.

Nanábhái Haridás, for the special appellants:—The plaintiffs are mortgagees. Their mortgage was in 1848. They did not sue till 1867. Their suit is, therefore, barred.

Dhirajlál Muthurádás, Government Pleader, for the special respondents:—(1) The plaintiffs have sued within one year from the date on which the attachment was raised, and their suit is within time, under Sec. 246 of the Code of Civil Procedure. (2) The defendant's purchase was during the pendency of the suit against the original mortgagor, and is, therefore, bad. (3) The cause of action should be taken to have arisen to the plaintiffs on the day they obtained their decree against the mortgaged property, *i.e.*, on the 7th of February 1857. For these reasons the claim is not barred.

PER CURIAM :—The mortgagor's rights were sold in 1854 to the original defendants, and they have had possession ever since. In 1857 the original plaintiffs obtained a decree against the property mortgaged, but did not execute it for some years after, the property not having been attached until about 1866. The exact date does not appear, but on the 25th of July 1866 the attachment was removed by the court on the application of the original defendants under Sec. 246 of the Code of Civil Procedure ; and on the 25th of July 1867 the present plaint was filed, in which it is prayed that the plaintiffs' mortgage-lien be satisfied from the mortgaged property. But it has been held by this court that a mortgagee must sue, to make good his claim against the mortgagor, within twelve years from the date of the mortgage ; and here the present suit is not brought until seventeen years after the date of the mortgage, and fourteen years after the sale to the original defendants. It is a *sán* mortgage ; possession was with the mortgagor, and his possession was from the first adverse to that of the mortgagee. The Court are, therefore, of opinion that the claim in the present suit is barred, and they reverse the decree of the lower courts, and reject the claim, with all costs on the plaintiffs.

Decrees reversed and claim rejected.

NOTE BY THE REPORTER.—On the same day another case was decided by the same Bench (S. A. No. 514 of 1870, *Karsan Báwá v. Jhaver Chaturbhuj et al.*). It was similar to the case above reported, with this difference, that the purchase by the defendant was in 1858, one year after the plaintiff's decree. The Court there said : "The defendants are bound by the decree of 1857, their purchase being subsequent to it ; but as the decree could not, from efflux of time, be executed against the mortgagor, it could not be executed against them."

1871.
GOKALBHAI
MULCHAND
et al.
v.
JHAVER
CHATURBHUI
et al.