

1872.
June 10.

[APPELLATE CIVIL JURISDICTION.]

1870.
June 6.*Special Appeal No. 68 of 1870.*

LAKHMICHAND WA'LOHAND *Appellant.*
 KASTUR BECHAR *Respondent.*

*Registration—Unregistered Deed of Sale—Registered Certificate of Sale
 —Priority—Act XX. of 1866, Sec. 50.*

A subsequent registered certificate of sale of immovable property by the Court does not take precedence over a prior unregistered deed of sale of the same property where the registration of such unregistered deed is optional under the provisions of the Act.

THIS was a special appeal from the decision of A. Bosanquet, Judge of the District of Tanna, reversing the decree of Mangeshrao Balwant, Subordinate Judge of Murbád.

The plaintiff filed an action to establish his title to a house sold to him on the 3rd of September 1868 by the widow of the proprietor, Ragh Patil, and which house the defendant, on the 20th October 1868, caused to be sold through the Civil Court in execution of his decree against the said Patil.

The defendant, *inter alia*, contended that his title resting, as it did, upon a registered certificate of sale, was, under Section 50 of Act XX. of 1866, superior to that of the plaintiff, whose deed had not been registered.

The Subordinate Judge said "the property had ceased to be Ragh Patil's on the date of the auction sale, and, consequently, the defendant, by purchasing it as Ragh Patil's, has obtained no right thereon. The registration of the certificate granted to the defendant under Section 259 of the Civil Procedure Code will not entitle him to priority under Section 50 of Act XX. of 1866, for the certificate in question is not a document of such a character as to be entitled to priority by virtue of its being registered over the plaintiff's unregistered deed of sale of which the registration was optional: *Fakirchand v. Káhandás.*" (a)

The Subordinate Judge found for the plaintiff on the other parts of the case, and made a decree in his favour.

(a) 3 Bom. H. C. Rep. A. C. J. 167.

The District Judge, in appeal, reversed the decree, on the ground that the registered certificate of sale took precedence over the prior unregistered deed of sale.

1872.
LAKHMI-
CHAND
WALCHAND
v.
KASTUR
BECHAR.

The special appeal was argued before WARDEN and MELVILL, JJ.

Pándurang Balibhadra, for the appellant.

Ganesh Hari Patwardhan, for the respondent.

PER CURIAM :—The plaintiff claims the disputed house under an unregistered conveyance executed by the representative of Ragh Patil, deceased. Subsequently to this conveyance the house was attached and sold in execution of a decree against Ragh Patil, and the usual certificate was granted to the defendant as purchaser, and registered by him. The Judge has held that under Section 50 of Act XX. of 1866, the defendant's certificate being registered takes precedence of the plaintiff's deed, which is unregistered. But it is to be observed that the two instruments do not purport or operate to convey the same property. The plaintiff's deed conveys to him Ragh Patil's entire estate in the house; the defendant's certificate conveys nothing more than such right, title, and interest as Ragh Patil might have in the house at the date of sale, and this would amount to nothing at all, if the previous sale to the plaintiff were valid. Section 50 of Act XX. of 1866 cannot, therefore, be held to be applicable. If a creditor cause to be sold property which does not belong to his judgment debtor at all, the purchaser cannot acquire a title against the real owner by merely registering his certificate.

The decree of the Judge below must be reversed and the case remanded, in order that the Judge may find upon the question of the *bona fides* of the plaintiff's deed of sale and pass a new decree accordingly, awarding costs.

Decree reversed and case remanded.

This ruling was followed in *Ganmall Fakatmall v. Fyzmal Gulabchand* (S. A. No. 257 of 1870), decided by GIBBS and LLOYD, JJ., on the 22nd September 1870, and also in *Shivram*

1872. valad *Amichand v. Pritiraj Kisandas* and others (S. A. No. 33 of 1872), decided by SARGENT, Acting C. J., and MELVILL, J., on the 10th of June 1872.

LAKHMI-
CHAND
WA'LEHAND
v.
KASTUR
BECHAR.

[APPELLATE CIVIL JURISDICTION.]

March 11.

Special Appeal No. 552 of 1871.

SAGANGOWDA' bin BASANGOWDA'.....*Appellant.*

BASA'PA' bin CHENA'PA'.....*Respondent.*

Limitation—Suit to recover land in possession of defendant—Accrual of cause of action—Evidence to be adduced by plaintiff.

A suit to recover possession of an unenclosed piece of ground must be brought within twelve years from the time the cause of action accrued, and in deciding this the issue is, not that the plaintiff must show that he exercised some right of ownership over the ground within the twelve years preceding the filing of the action, but that twelve years have not elapsed between the day the defendant interfered with the plaintiff's possession and the date on which the plaintiff filed his claim.

THIS was a special appeal from the decision of Baron D. H. Larpent, Judge of Dharwar, amending the decree of the Subordinate Judge of Gadak.

The plaintiff, a patel, alleged that an unenclosed piece of land was granted to him as an Inam on which to build a house; that in July 1869 the defendant interfered with his possession; that the plaintiff thereupon sued the defendant in the Court of the Mamlatdar, who in October of the same year confirmed the defendant in possession; and the plaintiff, therefore, sued in the Civil Court to obtain possession of his ground. The defendant denied both the plaintiff's title and possession and set up the statute of limitation.

The Court of first instance awarded part of the claim; but the Judge, in appeal, considered it barred by lapse of time. He said that it was for the plaintiff to show that he had exercised some right of ownership over the ground within the twelve years preceding the filing of this action, and, finding that, though the plaintiff attempted to show this by establishing one fact, viz., that within twelve years certain persons