

[APPELLATE CIVIL JURISDICTION.]

1874.
March 24.*Special Appeal No. 450 of 1873.*

BA'LA'JI NA'RA'YAN KOLATKAR *Appellant.*
 RA'MCHANDRA' GANESH KELKAR and
 othres..... *Respondents.*

Bombay Act I. of 1865—Paramount rights of Government with respect to land revenue—Mortgage lien—Registration—Possession.

The paramount rights of Government in respect of debts due to the Crown are not transferred to alienees (such as *Inámdárs*) of Government revenue.

If an *Inámdár* fails to recover his rents by any of the special processes provided in the Regulations, and is obliged to go into the Civil Court and obtain a decree for arrears, the sale of the land in execution of such a decree has the same effect (and no more) as a sale of land in execution of a decree for any other debt.

A mortgage deed, when registered, is valid without possession.

THIS was a special appeal from the decision of E. Cordeaux, Assistant Judge at Poona, amending the decree of the Subordinate Judge of Pátas.

Báláji sued to recover the amount of a mortgage debt due by Balvantráv under a deed dated 5th August 1866. He sought to recover the amount personally from the defendant, or, in default, from the sale of the mortgaged property. The defendant, Balvantráv, admitted the mortgage bond and stated that the plaintiff's claim might be realized by the sale of the mortgaged property. The other defendants answered that the mortgaged fields were sold in satisfaction of a decree which the *Inámdár* had obtained for payment of assessment of the land, and that as they had purchased the land at such a sale, they were not liable for the payment of the plaintiff's mortgage lien. The Subordinate Judge gave the plaintiff a decree for the amount claimed, first from the mortgagor (Balvantráv) personally or, in default, from the mortgaged fields. In appeal, however, the Asssistant Judge held that as the land was *Inám* land, and was sold for payment of assessment due to the *Inámdár* under a Civil Court's decree, the sale was not subject to the plaintiff's mortgage lien. He, accordingly,

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amended the Subordinate Judge's decree by ordering the plaintiff's claim to be satisfied by the mortgagor personally, and not from the land.

In special appeal, it was contended for the plaintiff that the defendants could not purchase the land without being liable for the plaintiff's mortgage lien, which, by law, attached to the land, and that the lower appellate court was wrong in holding that the *Inámdár's* lien on the land for arrears of rent had precedence over other pre-existing liens on the same land.

The special appeal was argued before MELVILL and NA'NA'-BHAI HA'RIDA'S, JJ., on the 24th March 1874.

Janárdhan Sakárám Gádgil, for the appellant.

V. N. Mandlik, for the respondents.

MELVILL, J.:—This case does not appear to be affected by the decision in *Abdul Gani v. Krishnaji (a)*. That decision proceeds upon the provisions of Bombay Act I. of 1865 (which, by Section 49 of the Act are not to be applied to alienated villages, unless specially extended to them,) and upon the paramount rights of Government in respect of debts—which are discussed in *Secretary of State for India v. Bombay Land-ing and Shipping Company (b)*, and which rights cannot be held to be transferred to the alienees of Government Revenue. The Regulations contain certain special provisions for enabling superior holders to realize their dues from their tenants: but we cannot find in them any provision which can be construed as making those dues a paramount charge upon the land. We think that if an *Inámdár* fails to recover his rents by any of the special processes provided in the Regulations, and is obliged to go into the Civil Court and obtain a decree for arrears, the sale of the land in execution of such a decree has the same effect (and no more) as a sale of the land in execution of a decree for any other debt. Under this view, we must hold that the defendants purchased the land subject to the plaintiff's mortgage (which was registered, and therefore valid even without possession), and we accordingly reverse the decree of the Court below and restore that of the Subordinate Judge. Costs of both appeals on special respondents.

(a) 10 Bom. H. C. Rep. 416. (b) 5. Bom. H. C. Rep. O.C.J. 48—50.