

[APPELLATE CIVIL JURISDICTION.]

1874.
Sept. 21.*Special Appeal No. 95 of 1874.*

KONA'PA' BIN MAHA'-

DA'PA'.....(*Original Defendant*) *Appellant.*JANA'RDAN SUKDEV...(*Original Plaintiff*) *Respondent.**Execution—Sale—Confirmation—Rights of purchasers at Court sales—Lâches.*

The purchaser at a Court's sale buys only the then existing right, title, and interest of the judgment-debtor, and therefore ordinarily takes, subject to the prior right, contingent on confirmation, of a former purchaser, though such former purchase be confirmed subsequently to his own.

Quære.—Whether the case might not be different if the delay in the confirmation of the former purchase were accompanied by great lâches on the part of the first purchaser, or by other special circumstances.

THIS was a special appeal from the decision of R. F. Mactier, District Judge of Satara, reversing the decree of the Subordinate Judge of Ashta.

On the 2nd February 1872 the defendant, Konápá, had purchased at a Court's sale the interest of one Rávji Jiváji in certain land. This sale was not confirmed till the 8th July 1872. In the meantime the plaintiff, Janárdan, had purchased the right, title, and interest of the same judgment-debtor in the same land, at a Court's sale, under another decree on the 6th March 1872, and this sale was confirmed on the 6th April.1872.

The plaintiff then sued the defendant to recover possession of the land. The defendant pleaded that the sale to him, though not confirmed till after that to the plaintiff, yet, being of prior date, entitled him to priority. On this ground the Subordinate Judge decreed in favour of the defendant. In appeal, however, the District Judge reversed the decree of the first court, on the ground that a sale of immoveable property was not a sale till confirmed under Section 256 of the Civil Procedure Code, and that, therefore, the plaintiff was entitled to priority in respect of the prior confirmation to him of his purchase.

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 KONA'PA' BIN
 MAHA'DA'PA'
 v.
 JANA'RDAN
 SUKDEV.

The special appeal was argued before WESTROPP, C.J., and KEMBALL, J., on the 21st September 1874.

Shántárám Náráyan for the appellant.

Vishvanáth Náráyan Mandlik for the respondent.

WESTROPP, C.J. :—The sale to the defendant, Konápá, on the 2nd February 1872, though not confirmed until the 8th July 1872, gave him, as against Rávji Jiváji, the judgment-debtor, from the 2nd of February 1872, a contingent right to the land, *i.e.*, contingent on subsequent confirmation. The plaintiff, on the 6th March 1872, purchased only the right, title, and interest of the judgment-debtor, Rávji Jiváji; that right, title, and interest was subject to the defendant Konápá's contingent right, which has since become absolute. Konápá's purchase is, therefore, entitled to precedence over that of the plaintiff. We accordingly reverse the decree of the District Judge, and restore that of the Subordinate Judge, with costs throughout on the respondent.

We are not to be understood as saying that, were the delay in the confirmation of the sale to Konápá to have been accompanied by great lâches on his part, or other special circumstances, the case might not be different. Here there is not any allegation of such lâches or other special circumstances.

Decree reversed.

[APPELLATE CIVIL JURISDICTION.]

October 5.

Special Appeal No. 107 of 1874.

BHIMRA'V JIVA'JI and others... *Plaintiffs and Appellants.*

BHIMRA'V GOVIND..... *Defendant and Respondent.*

Watan—Implied Contract—Small Cause Court—Jurisdiction—Act XI. of 1865, Sec. 6—Extraordinary Jurisdiction of the High Court—Annulment of proceedings before Subordinate Judge and District Judge.

Where a case properly cognizable by a Small Cause Court had been heard and determined by the Subordinate Judge, and in appeal by the District Judge, the High Court, in the exercise of its extraordinary jurisdiction, annulled the proceedings of the two lower courts.