

for the creation of an interest in immoveable property. In the case reported at 14 Moore I.A. 179, the document was an instrument acknowledging the payment of the entire purchase-money. I must, therefore, rule that the document in this case is not one that needs registration, and is, therefore, admissible in evidence.

1875.

JUSAB HA'JI  
JA'FAR  
v.  
HA'JI GUL  
MUHAMMAD.

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 278 of 1874.*

June 9.

PANHA' KHUMAJI ..... *Defendant and Appellant.*  
FATTA' UPA'JI..... *Plaintiff and Respondent.*

*Execution—Sale—Contest between two rival auction purchasers—Certificate of sale, Act VIII. of 1859, Section 259—Registration Act XX. of 1866, Sections 18 and 50.*

Plaintiff and defendant were two auction purchasers. Plaintiff's purchase was prior, but his certificate of sale was not registered. Defendant's purchase was subsequent, but he was in possession, and his certificate was registered. Registration was optional in both cases. In a contest as to priority between plaintiff and defendant,

*Held* that under the provisions of Act XX. of 1866, Section 50, the defendant's title must prevail against that of the plaintiff.

**T**HIS was a special appeal from the decision of W. H. Crowe, Assistant Judge at Thaná, reversing the decision of the Subordinate Judge of Penn.

The material facts in this suit, which was instituted by Futta Upaji against Panha Khumaji to recover certain immoveable property, are these :—The property in dispute originally belonged to one Posha Aba, and was, on the 11th November 1868, sold in execution of a decree against him and purchased by the plaintiff Futta Upaji. A certificate of sale was granted to him under Section 259 of the Civil Procedure Code, but was not registered by him. The property was again sold in execution of another decree against the said Posha, and was, on the 17th November 1869, purchased by the defendant Panha Khumaji, who took possession, and got his certificate of sale registered. Both the sales being for less than Rs. 100, registration was optional under Act XX.

1875. of 1866, Section 18. The Court of first instance dismissed the suit on the ground that defendant's claim was stronger than that of the plaintiff. In appeal, however, the Assistant Judge reversed that decree, and awarded the plaintiff claim on the ground that his purchase was prior to that of the defendant, and that, therefore, at the time of the sale to the latter, Poshā Aba had no title left in the property sold.

The special appeal was argued before KEMBALL and NA'NA' BHAI HARIDA's, JJ.

*Dhirajlāl Mathurādās* (Government Pleader) for the appellant.

*Shāntārām Nārāyan* for the respondent.

KEMBALL, J. :—We must reverse the decree of the lower Court and restore that of the Court of first instance. We have a contest between two auction purchasers. The defendant, though his purchase was subsequent, is in possession, and his certificate of sale, which, under Section 259 of the Civil Procedure Code, is his title-deed, is registered. Whereas, the plaintiff, though his purchase was prior, failed to have his certificate registered. Registration was optional in both cases; therefore, as each of the parties must depend on his certificate, it follows, under Section 50 of the Registration Act, that defendant's title must prevail. Decree of the lower Court reversed with costs on respondent.

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[APPELLATE CIVIL JURISDICTION.]

June 14.

*Special Appeal No. 263 of 1874.*

VITHOBA' BIN CHABU (Original Plaintiff) ... *Appellant.*  
 GANGA'RA'M BIN BIRAMJI (Defendant No. 6) *Respondent.*

*Mortgage—Redemption—Adverse possession—Limitation, Act XIV. of 1859, Section 1, Clause 15.*

A mortgagor sued his mortgagee to redeem, joining as defendant the person in possession of the mortgaged land, who claimed to hold adversely to both the mortgagor and the mortgagee.