

ment. The struggle there was to obtain a preference for a claimant under an execution sale.

In this view of the matter we must reverse the decree of the Court below, and reject the claim with costs throughout.

We may observe that no question of notice or fraud arises in this case, as none such was ever suggested in the Courts below. We are not, therefore, called upon to consider whether notice on the purchaser's part of the existence of a prior unregistered charge would, in any way, affect the provisions of the Registration Act; nor, in the view we have taken of those provisions, is it necessary for us to express any opinion upon the point raised in the second ground of appeal to us, namely, whether Kálidás, having paid off Jorá's prior mortgage before the term of that mortgage had expired, did not thereby become an assignee of that mortgage, and, as such, entitled to resist the plaintiff's claim (*d*).

*Decree reversed and claim rejected.*

*Note.*—The ruling in this case was followed in S. A. No. 133 of 1873.

[APPELLATE CIVIL JURISDICTION.]

*Regular Appeal No. 12 of 1875.*

LA'LBHAI LAKHMIDA'S ..... (*Plaintiff*) *Appellant.* September 23.  
 NAVA'L MIR KAMA'LUDIN HUSEN  
 KHA'N ..... (*Defendant*) *Respondent.*

*Certificate of sale—Registration—Practice.*

The plaintiff, as purchaser at a Court's sale, sued in 1871 for possession of certain immoveable property, and tendered in evidence a sale certificate dated 20th September 1865. The first Court decided against the plaintiff on the ground, among others, that the certificate was not registered, though registration of it was compulsory. On the 9th February 1875 the plaintiff filed an appeal in the High Court against that decree, and on the 26th July 1875 applied to that Court for permission to give in evidence a new certificate of sale, issued on the 1st February 1875, regarding the same property as that to which the certificate of the 20th September 1865 related.

*Held* by the High Court that, as the new certificate was issued after the first Court had made its decree, the High Court ought not to receive it or to suggest or facilitate any application to the lower Court for a review of its decree on documentary evidence which had no existence when that Court made such decree.

(*d*) See *Itcharám v. Dayáram*, 11 Bom. H. C. Rep. 41.

1875.  
 MAKANDA'S  
 KA'LIDA'S  
 and  
 SHANKARDA'S  
 DA'DA'BHA'I  
 v.  
 SHANKARDA'S  
 HANIBHA'I.

1875.

Distinction pointed out between this case and *Mohidin v. Mahádáji* (S. A. 437 of 1872).

LA'LBHA'I  
LAKHMIDA'S

v.  
NAVAL MIR  
KAMA'LUDIN  
HUSEN  
KHA'N.

*Quære*—Whether, under the circumstances of this case, the Subordinate Judge, who issued the new certificate of sale on the 1st February 1875, ought to have so issued it, in order that the plaintiff might register it, the plaintiff having already lost, by his own laches, the right to register the original certificate.

*Quære*—Whether the Court of first instance ought to have received the second certificate if it had been issued and tendered in evidence subsequently to the filing of the suit, but previously to the original hearing.

**T**HIS was a regular appeal from the decision of Makundrái Manerái, 1st Class Subordinate Judge at Surat, in suit No. 1062 of 1871.

The question raised and argued in this case was, whether the plaintiff, who brought his suit as purchaser under a certificate of Court's sale which was not registered, notwithstanding its registration was compulsory, should be permitted in appeal to give in evidence a new certificate of sale, relating to the same property, obtained and registered after the suit had been decided.

The appeal was argued before WESTROPP, C.J., and KEMBALL, J., on the 23rd September 1875.

*Dhirájlál Mathurádás* (Government Pleader) for the appellant contended that the new certificate of sale, issued on the 1st February 1875, and properly registered, ought to be received in evidence by the High Court. He cited *Mohidin v. Mahádáji* (S. A. No. 437 of 1872).

*Nagindás Tulsidás* and *Chundulál Mathurádás* for the respondent were not called upon.

WESTROPP, C.J.:—This cause was decided by the Subordinate Judge on the 11th November 1874, and he, amongst other grounds, made a decree against the plaintiff, because the two certificates of sale (Exhibits 2 and 3), dated the 20th September 1865, were unregistered. It is admitted by the pleader of the plaintiff that the decision of the Subordinate Judge on that ground cannot be impeached, it being fully supported by *Padu v. Rakhmái (a)* and many other cases to

(a) 10 Bom. H. C. Rep. 435.

the like effect. The plaintiff's pleader, however, seeks by his *darkhást*, of the 26th July 1875, presented in this appeal, which was filed on the 9th February 1875, to retrieve his cause by asking permission to give in evidence new certificates of sale, issued on the 1st of February 1875, of the two villages the subject of this suit, and since registered, and cites the case of *Mohidin v. Mahádáji* (S. A. No. 437 of 1872) decided in this Court on the 16th of June 1873. There the original certificate of sale had been lost, and the Sadar Amin granted to the plaintiff a new certificate of sale, which not only had been registered before the suit was brought, but also before the registration of the certificate of sale, which the defendant there relied upon. And in *Ládu Sáheb v. Irbássapa* (mentioned in that case) the new certificate of sale was, on the 4th October 1871, ordered by Melvill and Kemball, JJ., to be granted to the petitioner, because the original certificate had been detained, without his fault, in the Court of the Subordinate Judge until the time for registration had expired. Those cases, therefore, wholly differed in their facts from that with which we have to deal here. The original certificates of the 20th September 1868 have not been lost, and have been filed as exhibits and relied upon in this cause before the Subordinate Judge. The circumstance that they are unregistered, was wholly owing to the plaintiff's own fault, and not to that of any Court. We have strong doubts whether, under such circumstances, Mr. Barjorji Edalji, a Subordinate Judge, ought to have issued any new certificates of sale in order that the plaintiff might register them, he having lost by his own laches the right to register the original certificates. Howsoever that may be, the question here being whether the plaintiff had a title as purchaser at the time of the institution of this suit on the 10th of August 1871, we cannot permit him to give in evidence certificates of sale obtained and registered some years after the suit was commenced, and some months after it was decided. It is more than questionable whether, if they had been issued and tendered in evidence subsequently to the filing of the suit, but previously to the original hearing, the Judge of first instance

1875.

LA'LBHA'I  
LAKHMIDA'S  
v.  
NAVAL MIR  
KAMA'LUDIN  
HUSEN  
KHA'N.

1875.  
 LA'LBIA I  
 LAKHMIDA'S  
 v.  
 NAVA'L MIR  
 KAMA'LUDIN  
 HUSEN  
 KHA'N.

ought to have received them. We are quite certain that, issued, as they were, after he has made his decree, we ought not to receive them, nor ought we to suggest or facilitate any application to him for a review of his decree on documentary evidence that had no existence when he made it. We affirm that decree with costs.

*Decree affirmed.*

[ORIGINAL CIVIL JURISDICTION.]

*Suit No. 556 of 1873.*

*Appeal No. 266.*

July 3rd.

SORA'BJI DUNDAS .....	NASSARVA'NJI	}	<i>Plaintiff and Appellant.</i>
THE JUSTICES OF THE PEACE FOR THE CITY OF BOMBAY.		}	<i>Defendants and Respondents.</i>

*Bombay Act II. of 1865—Ejectment—Limitation—Acquisition of land for public purposes—Compensation—Mesne profits.*

Bombay Act II. of 1865, Section 240, does not apply to suits in the nature of an action of ejectment.

Acts relating to the acquisition of lands for public purposes must be construed strictly in favour of the subject.

The Court will not oblige the plaintiff in a suit in the nature of an action of ejectment to accept compensation.

*Quere*—Whether a claim to recover the mesne profits of land for which the plaintiff sues in ejectment comes within the provisions of Bombay Act II. of 1865, Section 240?

*Price v. Khilat Chandra Ghose* (5 Beng. L. R. Appx. 50) and the judgment of Phear, J., in *Poorno Chunder Roy v. Balfour* (9 Calc. W. R. 535 Civ. Bul.) approved.

THIS was an appeal from the decision of Sargent, J., dismissing a suit brought to recover possession of certain land of which the plaintiff alleged that he had been deprived by the defendants in 1868, and to recover the mesne profits of the same land received by the defendants.