

Section of which puts judicial sale on the same basis as private transfers, and not under the Civil Procedure Code. But Sir B. Peacock, in giving the judgment of the Privy Council, did not take any distinction between a judicial sale under that Act and a judicial sale under the Civil Procedure Code. The plaintiffs have relied on the decision of Phear, J., in *Jugdeep Narain Singh v. Deendial* ⁽¹⁾, but that decision was made previously to the Privy Council decisions in *Girdháree Lall v. Kantoo Lall* ⁽²⁾.

1876.
 NA'RA'YANA'-
 CHARYA
 v.
 NARSO
 KRISHNA
 AND ANOTHER

We reverse the decrees of the Courts below, and make a decree for the defendant Náráyanácharya, and we direct the plaintiffs to pay to him the costs of the suit, but order that the parties respectively shall bear their own costs of both appeals.

[APPELLATE CIVIL JURISDICTION.]

Miscellaneous Special Appeal No. 9 of 1876.

GOPAL NA'RA'YAN (ORIGINAL PLAINTIFF, APPELLANT) v. TRIMBAK SA'DA'SHIV AND ANOTHER (ORIGINAL DEFENDANTS, RESPONDENTS).

August 8.

Registration Act VIII. of 1871, Section 17—Assignment of a decree for sale of mortgaged property.

Where a mortgagee obtained a decree against his mortgagors for the payment of the mortgage moneys, and in default for the sale of the mortgaged property, and his heir afterwards executed an assignment of the decree, for valuable consideration, to the plaintiff, who proceeded to execute the decree by sale of the mortgaged property,

Held that the assignment was a document of which the registration was compulsory.

THIS was a miscellaneous special appeal from the order of R. F. Mactier, District Judge at Satara, affirming the order of Krishnaráv Vithal Vinchurkar, 1st Class Subordinate Judge at the same place.

One Náro Bápuji obtained a decree on a mortgage deed against two brothers Trimbak and Ganesh, in the Court of the

(1) 12 Beng. L. R. 100; S. C. 20 Calc. W. R. 174 Civ. Rul.

(2) L. R. 1 Ind. App. 321; S. C. 14 Beng. L. R. 187; 22 Calc. W. R. 56 Civ. Rul.

1876. 1st Class Subordinate Judge at Satara, under date the 22nd January 1868, for Rs. 1,600, to be realized by the sale of a house belonging to the defendants and mortgaged by such deed. The plaintiff, Gopál, purchased this decree for Rs. 700 from Náro's brother and heir, Dámodar, who executed a writing purporting to assign the decree to the plaintiff on 6th January 1875; the plaintiff proceeded to execute the decree against Trimbak and Ganesh. The defendants moved in bar of execution, on the ground that the deed of assignment, which was Gopál's authority for executing the decree, was not registered. The Subordinate Judge allowed the objection, and held that the assignment ought to have been registered under Act VIII. of 1871, Section 17.

In appeal that decision was upheld by the District Judge. He observed:—"The deed of sale, under which this decree was transferred from Dámodar to Gopál, purported to assign to Gopál certain interest in immoveable property; for it gave to him the liberty to sell by auction, by executing the decree against it, the defendant's house; and this liberty to sell was certainly an interest in immoveable property, and the decision of the Subordinate Judge was, I think, right, and must, therefore, be confirmed."

In special appeal the same point was raised.

The special appeal was heard before WESTROPP, C.J., and KEMBALL, J.

Shámráv Vithal for the special appellant.

Frámji Kalkhasru for the special respondent.

Per Curiam:—We concur in the decision of the Lower Courts, and dismiss the appeal with costs.

Orders affirmed.