

## [APPELLATE CIVIL JURISDICTION.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

RAMCHANDRA MANKESHWAR (PLAINTIFF AND APPELLANT) v.  
BHIMRAV RA'VJI AND ANOTHER (DEFENDANTS AND RESPONDENTS)\*

1877.  
March 1.

*Bombay Act I. of 1865, Section 2, Clause (j), and Sections 36 and 42, Clause 1st—  
Razindámá—Occupant—Mortgage of Mirási land—Interest.*

D, widow of a Hindu *Mirásidár*, by a duly-registered deed, dated the 24th of November 1869, mortgaged the *Mirási* land of her deceased husband to R. M. for Rs. 150. Subsequently, on the 5th July 1872, D executed a *razindámá* of the land in favour of R. G.

*Held* that the mortgage bound D's estate in the *Mirási* land as a Hindu widow; that whether the property is regarded as *Mirási*, or as that of an ordinary occupant, it is transferable under Section 36 of Bombay Act I. of 1865; that when D executed the *razindámá*, there was nothing left in her to relinquish or otherwise deal with more than the equity of redemption; that, consequently, R. G. took nothing by the *razindámá* executed in his favour by D, except this equity of redemption.

*Tarachand v. Lakshman* (I. L. R. 1 Bom. 91) distinguished.

The distinction between the present and the case of a purchase at a sale for arrears of Government land revenue is, that at such last-mentioned sale the purchaser takes the land discharged of all encumbrances, inasmuch as the Government land revenue is the paramount charge upon the land.

Interest allowed not exceeding the principal, following the rule of *Damdapat*.

THIS was a special appeal from the decision of E. Cordeaux, Assistant Judge at Sholápur, in the district of Poona, amending the decree of Rávjí Govind, 2nd Class Subordinate Judge at Bársi.

Ramchandra Mankeshwar brought this suit against Deoku, (defendant No. 1), Bhimráv Rávjí (defendant No. 3), Ravjí Girdhar (defendant No. 4), and Vitto Balla, the lessee of Bhimráv, (defendant No. 2). The plaintiff sought in this suit to recover Rs. 279 due on a mortgage bond, for Rs. 150 with interest at 2 per cent. per mensem, executed by Deoku, on the 24th November 1869, and prayed for a decree against Deoku personally or against the mortgaged property. Deoku (defendant No. 1) pleaded that the mortgage was fraudulent and without consideration, and that she had relinquished the land by a *razindámá* in favour of Bhimráv Rávjí (defendant No. 3), under date

\* Special Appeal No. 378 of 1876.

1877. the 5th July 1872. Bhimráv and Rávji (defendants No. 3 and 4) answered that the land belonged to defendant No. 4 as *Jagirdár*, and was relinquished by defendant No. 1, and entered in the name of defendant No. 3 in the revenue books, and that, therefore, the plaintiff could not claim to recover the mortgage debt by the sale of the land. The Subordinate Judge awarded the claim against Deoku (defendant No. 1) personally, and, in default of payment, ordered the sale of the mortgaged property. In appeal, which was preferred by defendants Nos. 3 and 4 (Bhimráv and Rávji), the Assistant Judge, on the authority of *Tarachand v. Lakshman*,<sup>(1)</sup> held that the lien of the plaintiff on the land as mortgagee became extinct when Deoku (defendant No. 1) presented her *razinámá*; and amended the decree of the first Court by making a decree for the payment of the money only against Deoku personally. The plaintiff preferred a special appeal, and of the respondents Bhimráv and Rávji only appeared.

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*Bhairavnáth Mangesh* for the appellant:—The Assistant Judge was wrong in holding that the person in whose favour a *Mirásdár* resigns his land does not take it subject to a mortgage created by the *Mirásdár* before the date of his *razinámá*. The case relied upon by the Assistant Judge in support of his decision does not apply. In that case there was no mortgage executed by the *Mirásdár* prior to the date of the *razinámá*.

*Shántáram Náráyán* for the respondents:—Deoku was an occupant of the land in dispute as defined by Section 2, Clause (j), of Bombay Act I. of 1865, being responsible to Government for payment of the assessment due on it. As such occupant she was at liberty to relinquish her rights of occupancy under the provisions of Section 42, Clause 1. When Deoku mortgaged the land to the plaintiff, he ought to have got his name entered in the revenue books as occupant. By omitting or neglecting to do so, the plaintiff placed her in a position to resign the rights of occupancy in favour of any person she chose. By this omission or neglect on the plaintiff's part, he necessarily ran the risk of being deprived of his lien on the land by Deoku executing a *razinámá* in favour of a new occupant. Supposing the assessment payable on this land had fallen into arrears, and the land had been sold for

(1) I. L. R. 1, Bom. 91.

such arrears, the purchaser would have taken it free of all encumbrances as held by this High Court in *Abdul Gani v. Krishnaji*,<sup>(1)</sup> *Gundo v. Mardan*,<sup>(2)</sup> and *Ghelabhai v. Pranjivan*.<sup>(3)</sup>

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The judgment of the Court was delivered by

WESTROPP, C.J.:—The case *Tarachand v. Lakshman*<sup>(4)</sup> cited by the Assistant Judge is not any authority for his decision. There was not in that case any mortgage or other specific lien on the land created by the *Mirásdár*, Bhagu, or his predecessors in title, previously to his execution of the *vazinámá* in favour of Lakshman, the new occupant. The learned pleader for the respondents, in the present case, relied upon Bombay Act I. of 1865, Section 2, Clause (j), and Section 42, Clause 1st, as sufficient to support the title of the defendant Bhimráv Rávji, in whose favour Deoku (the first defendant) executed the *vazinámá* of the 5th July 1872 to the *Jahagirdár* Rávji Girdhar, father of Bhimráv Rávji. But there is nothing in Section 42 which would enable Deoku to relinquish more of the *Mirási* estate than was left in her at the time of the *vazinámá*. She had already, on the 24th November 1869, by a duly-registered deed, mortgaged the lands in dispute to the plaintiff Ramchandra Mankeshwar for Rs. 150; that mortgage was *pro tanto* an assignment of her *Mirási* interest, and that she could make such an assignment has not been disputed in this case. How far it would bind her husband's heirs, is not a question now before us. It would, at all events, bind her estate in the lands as a Hindu widow;<sup>(5)</sup> whether we regard the *watan* or the property as *Mirási* or as that of an ordinary occupant (*Khatedar*), it was transferable (Bombay Act I. of 1865, Section 36); and when she had executed the duly-registered mortgage of 1869, there was nought left in her to relinquish or otherwise deal with than the equity of redemption. Bhimráv Rávji, therefore, by Deoku's execution of the *vazinámá* in his favour took nothing except the equity of redemption. The *Jahagirdar* admitted him in virtue of that *vazinámá*, and not otherwise. This was not a case of a purchase at a sale for arrears of Government land revenue.<sup>(6)</sup> At such a sale the purchaser, inasmuch as the Government land revenue is

(1) 10 Bom. H. C. Rep. 416.

(2) *Ibid.* 419.

(3) 11 Bom. H. C. Rep. 218.

(4) I. L. R. 1 Bom. 91.

(5) See 2 Bom. H. C. Rep. 313, and 8 Bom. H. C. Rep. 37, A. C. J.

(6) As to *Jahgirdárs* and *Inamdárs*, see 11 Bom. H. C. Rep. 37.

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the paramount charge upon the land, takes the land discharged of all incumbrances : *Abdul Gani v. Krishnaji*,<sup>(1)</sup> *Gundo v. Mardan*,<sup>(2)</sup> *Ghelabhai v. Pranjivan*.<sup>(3)</sup> In the present case Bhimráv Rávji, if he had taken the trouble to search the register [as a prudent purchaser or intended assignee would have done] would have learned that the widow's interest in the lands was burdened with the plaintiff's mortgage. We reverse the decree of the Assistant Judge, and direct that the defendant Deoku do pay to the plaintiff the sum of Rs. 150, *i. e.*, principal money, together with interest at the rate of 2 per cent. per mensem from the 24th November 1869 until payment : provided, however, (having regard to the rule of *Damdapat*) that the whole sum payable by her in respect of the said principal money and interest shall not exceed Rs. 300 in the whole, and it is further directed that all of the defendants shall pay to the plaintiff his costs of this suit, and that the defendants Bhimráv Rávji and Rávji Girdhar do pay to the plaintiff his costs of both appeals, and it is also directed that in default of payment of the said principal money and interest and costs of this suit by the said defendant Deoku, or of payment of the same and of the costs of both appeals by the defendant Bhimráv Rávji (in his capacity as assignee of her equity of redemption) within 6 calendar months from this 1st day of March 1877, the estate of the widow Deoku in the land in the plaint mentioned shall be sold by public auction, and, after deduction of the expenses of sale, the proceeds of sale shall be applied in discharge of the said principal money and interest (not exceeding Rs. 300 as aforesaid) and the costs of this suit and of both appeals, and the defendants in this suit shall be for ever barred and foreclosed from redeeming the said lands, and the residue, if any, of the said purchase money left after payment of the said principal, interest, and costs, shall be made over to the defendant Bhimráv Rávji. The defendant Deoku and the defendant Vitto Balla are respectively to bear their own costs of the suit, and the defendants Bhimráv Rávji and Rávji Girdhar are to bear their own costs respectively of the suit and of both appeals.

*Decree reversed.*

(1) 10 Bom. H. C. Rep. 416.

(2) *Ibid.* 419.

(3) 11 Bom. H. C. Rep. 218.