

1879  
 RAJA VALAD  
 SHIVAPA  
 v.  
 KRISHINA-  
 BHAT.

less should we be willing to make any order which might appear to declare that a marriage celebrated, as in the present case, by a priest other than the *vatandar joshi*, is invalid, and the children of such marriage illegitimate. We think that we are not required to do more than to secure the legitimate holder of the priestly office from pecuniary loss, and this end is sufficiently secured by giving him a decree for the amount of his fees against the *yajman* and the rival priest.

We amend the decree of the Court below by awarding plaintiff's claim for ten annas nine pice against all the defendants, and by omitting from it the injunction against the third defendant. So much of the plaintiff's costs as was awarded by the Assistant Judge against defendant Raja only to be borne by defendants Raja and Balappa. In other respect the decree is confirmed. The parties to bear their own costs in this appeal.

### APPELLATE CIVIL.

( 59 )

*Before Mr. Justice Melvill and Mr. Justice Kemball.*

1878  
 February 21.

KUVARJI (ORIGINAL DEFENDANT), APPELLANT, v. MOTI HARIDAS  
 (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Unauthorized sale—Lien—Repayment of money due on a mortgage.*

The plaintiff as purchaser at a Court's sale sued to recover land in possession of the defendant. The defendant alleged that he had bought the land from the widow of the previous owner by whom it had been mortgaged, and that he (the defendant) had paid off the mortgage. The previous owner had left a minor son. The lower Courts passed a decree for the plaintiff, on the ground that the sale by the widow to the defendant was invalid, as she had not obtained a certificate of administration to her husband under Act XX of 1864.—*Held* that the defendant had a lien upon the land for the amount of the mortgage debt which he had paid, and that the plaintiff could not set aside the sale to the defendant without refunding the amount secured by the lien.

*Bai Kesar v. Bai Ganga* (8 Bom. H. C. Rep. 31, A. C. J.) followed.

THIS was a second appeal from the decision of E. Cordeaux, Acting District Judge of Khandesh, affirming the decree of the Second Class Subordinate Judge of Nandurbar.

\* Second Appeal, No. 440 of 1878.

Moti Haridas brought this suit against Kuvarji Khusal for a declaration of his title to certain land, and for possession thereof. He alleged that he purchased the land at a Court's sale in execution of a decree which one Yadav Narayan had obtained against Prayag, the original owner of the land. Prayag subsequently died, leaving him surviving a widow and a minor son. The defendant answered that he had purchased the land in dispute from Rakhmabai, the widow of Prayag, for Rs. 325 and paid the money, at her request, to the mortgagees to whom Prayag had mortgaged it. One of the issues framed by the Subordinate Judge was whether it was competent to the widow to convey the land in dispute. He found that issue in the negative, and awarded the land to the plaintiff. In appeal the District Judge also held the sale invalid, and affirmed the decree of the first Court. He observed: "I find that the conveyance was invalid by reason of Rakhmabai having no authority under Act XX of 1864. The deceased's widow was not the legal administratrix, having obtained no certificate of administration, nor was the sale of the property by her, on behalf of the minor, valid without the permission of the District Court. It is contended that, even if the sale is invalid, the defendant has a line upon the land on account of the payment of Rs. 325 to the mortgagees. This question does not arise in this suit, and the defendant is at liberty to take what steps he may please in this respect."

*Shantaram Narayan* for the appellant.—The appellant redeemed and purchased the land by paying off the mortgage thereon made by the original owner. The appellant, therefore, has a line on the land to the extent of the money he paid in satisfaction of the mortgage, and it would be inequitable to deprive him of his claim by taking the land from him without satisfaction of his lien. Although the sale by the widow may be invalid, yet the respondent, who is an auction-purchaser, ought not to be allowed to obtain the land without satisfying the appellant's line thereon, according to the principle laid down in *Bai Kesar v. Bai Ganga*.<sup>(1)</sup> Again, the estate of the minor not having come under the administration of the civil Court, the authorization by the civil Court, supposed to be necessary, was not required by law.

(1) 8 Bom. II. C. Rep. 31, A. C. J.

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*Nanabhai Haridas* for the respondent.—The appellant claims as purchaser from the widow of Prayag, who died, leaving a minor son. If, therefore, the widow had no right to sell the land, as decided in *Bai Kesar v. Bai Ganga*, the sale was invalid, *ab initio*, and conveyed nothing.

MELVILL, J.—The decision in *Bai Kesar v. Bai Ganga*(1) supports the decrees of the Courts below. But the same decision shows that the minor in that case would not have been allowed to set aside the transaction entered into by his mother, unless he repaid the money of which he had had the benefit, and we think that the same principle applies with even greater force to a creditor, or auction-purchaser, seeking to set aside such a transaction. If it be true, as alleged by the defendant, that he paid off a valid mortgage on the estate, we think that the plaintiff cannot, in equity, claim to eject the defendant from possession of the estate, without repaying to him the amount due on the mortgage, for which the defendants must be considered to have a line upon the estate. The Courts below have refused to go into the question of the existence, or otherwise, of such line, and we, therefore, reverse the decrees of both Courts, and remand the case, in order that it may be determined whether the defendant has paid off a mortgage with which the estate would otherwise be burdened, and if so, what is the amount for which the defendant has a line one of the estate. In the event of it being found that such an amount is due, the Court trying the case should make a decree in favour of the plaintiff conditional on payment of such amount within a limited time, and should direct that, in default of such payment, he be for ever foreclosed. Costs to follow final result.

*Decree reversed and case remanded.*

(1) 8 Bom. H. C. Rep, 31, A. C. J.