

1879 from the date on which the balance of Rs. 1,159-2-0 was struck in July  
 OCT. 8. 1865; and that the suit is barred by the law of limitation."

APPEL-  
 LATE  
 CIVIL.

42.

Decree reversed.

Note.—See *Hingun Lal v. Debee Parsad*, 24 C.W.R. C.R.

4 B. 230=  
 5 Ind. Jur.  
 90.

4 B. 235=5 Ind. Jur. 143.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Officiating Chief Justice,  
 and Mr. Justice M. Melville.

SHIDLINGAPA AND ANOTHER (*Original Defendants*), Appellants  
 v. CHENBASAPA (*Original Plaintiff*), Respondent.\*

[19th December, 1879.]

Registration—Act No. III of 1877, s. 17, cls. (b) and (c)—Receipts by mortgagee.

Receipts passed by a mortgagee for sums paid on account of the mortgage-debt, and exceeding Rs. 100 each, are not inadmissible in evidence, for want of registration, under Act III of 1877, s. 17.

The technical term "consideration" implies that the person to whom the money is paid, himself limits or extinguishes his interest in the land in consideration of such payment. Such limitation or extinction (if there can be said to be any) as results from the payment on account of the mortgage-debt, is the legal consequence of such payment, and not the act of the mortgagee.

The payment reduces the sum due at the time on the mortgage, and thus modifies the account between the mortgagor and mortgagee. But it does [236] not operate to limit or confine within narrower limits the right or interest of the mortgagee in the land, which is simply to have the payment of the principal and interest secured on the mortgaged premises by some one or other of the remedies available for that purpose.

Money paid on account of a mortgage-debt is not the consideration for the limitation or extinction of so much of the interest in the land created by the mortgage, and a receipt for such a payment need not, therefore, be registered under s. 17, cl. (b) of the Registration Act III of 1877.

*Dalip Sing v. Durga Prasad* (1) not followed.

[*Disc.*, 6 A. 335; *F.*, 5 B. 181; *R.*, 19 B. 36 (42); 24 B. 609; 103 P.L.R. 1905; *D.*, 7 B. 123.]

THIS was a second appeal from the decision of M. H. Scott, Acting Judge of the District Court of Dharwar, in appeal No. 111 of 1878, affirming the decree of G. V. Bhanap, Subordinate Judge (Second Class) at Gadag, in original suit No. 769 of 1877.

The plaintiff brought this suit against Shidlingapa and four others to recover Rs. 3,344, being principal and interest due on a mortgage bond executed to him on the 9th December 1877 by Mudibasapa, deceased, father of defendants 1, 2, 3, and 4, and grandfather of defendant No. 5. The plaintiff prayed that his claim might be decreed to be satisfied by the sale of the mortgaged property.

Shidlingapa and Andanapa (defendants 2 and 5) answered that the debt for which the property had been mortgaged by Mudibasapa, was not contracted for a family necessity; that the property, therefore, being ancestral, was not liable after his death; that he (Mudibasapa) had paid

\* Second Appeal No. 288 of 1879.

(1) 1 A. 442.

Rs. 2,700 to the plaintiff on account of the mortgage-debt, and obtained receipts from him for the money (Exs. 24, 25 and 26). The other defendants did not appear.

The Subordinate Judge held, on the authority of *Dalip Sing v. Durga Prasad* (1), that the receipts (24, 25 and 26) were inadmissible in evidence for want of registration. On the merits he held that the plaintiff had proved the mortgage on which he sued, and that the defendants were all liable for it. He, accordingly, on the 4th October 1878, passed a decree in favour of the plaintiff for Rs. 3,200, and dismissed his claim to the rest, on the principle of *dam-dupat*. He directed this amount to be satisfied from the mortgaged property and from the estate of the deceased Mudibasapa in the hands of the defendants, and awarded interest at 9 per cent. from date of suit to date of payment.

[237] Defendants 2 and 5 appealed, and contended, among other things, that the Subordinate Judge ought to have admitted the receipts (Exs. 24, 25 and 26) in evidence, although they were not registered. The District Judge affirmed the decree of the first Court, 31st March 1879.

The defendants filed a second appeal in the High Court on the 17th July 1879.

The only question argued in the High Court was, whether or not the receipts were admissible in evidence.

*Macpherson* (with him *Ghanasham Nilkanth Nadkarni*), for the appellants, relied upon *Basawa v. Kalkapa* (2). The learned counsel also referred to *Tukaram Vithoji v. Khandoji Malharji* (3) and *Sangappa v. Basappa* (4).

*Farran* (with him *Manekshah Jehangershah*) appeared for the respondent, and relied upon *Dalip Sing v. Durga Prasad* (1) in support of the decision of the lower Court.

#### JUDGMENT.

The following is the judgment of the High Court delivered by SARGENT, C.J. (Officiating).—The respondent in this case sued upon a mortgage-bond, which was found to be proved and binding on all the defendants. The only question of law raised on second appeal is whether the District Judge was right in holding that three receipts passed by the mortgagee for the several sums of Rs. 1,000, 1,200 and 500, respectively, paid on account of the mortgage-debt, being Exs. 24, 25 and 26 in the case, were inadmissible in evidence for want of registration. As the suit was filed in December 1877, the Registration Act (III of 1877) applies. The question would appear to have been determined by the High Court of Allahabad against their admissibility under Act VIII of 1871 (which, for the purposes of this question, is identical with Act III of 1877) in the case of *Dalip Sing v. Durga Prasad* (1). No reasons, however, are given by the Court for the conclusion arrived at. It was contended before us that the exhibits were inadmissible, as being documents requiring to [238] be registered under both cls. (b) and (c) of s. 17 of the Act of 1877. With respect to cl. (b), we think it would be impossible, without straining language, to say that the sum paid on account of a mortgage-debt is the consideration for the limitation or extinction of so much of the interest in the land created by the mortgage-bond. The use of the technical term "consideration" implies that the person himself to whom the money is

(1) 1 A. 442.

(3) 6 B.H.C.R. O.C.J.134.

(2) 2 B. 489.

(4) 7 B.H.C.R.A.C.J. 1.

1879  
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paid, limits or extinguishes his interest in the land in consideration of such payment, whereas such limitation or extinction (if there can be said to be any), as results from the payment on account of the mortgage-debt, is the legal consequence of such payment, and not the act of the mortgagee. It was said, however, that, at any rate a receipt operates to limit the mortgagee's interest in the land, as contemplated by cl. (b). Undoubtedly, the payment reduces the sum due at the time on the mortgage, and thus modifies the account between the mortgagor and mortgagee; but it does not operate to limit or confine within narrower limits the right or interest of the mortgagee in the land, which is simply to have the payment of the principal and interest secured on the mortgaged premises by some one or other of the remedies available for that purpose.

The question has never, as far as we know, been directly raised in this Court. However in the case of *Basawa v. Kalkapa* (1) it would appear to have been assumed that a simple receipt for a payment in respect of a mortgage-debt would not require registration. The Court says: "On that point it has been urged by Mr. Mandlik that the document No. 45 is, *prima facie*, a receipt; that his client Kalkapa wishes to employ it in no other character; and that as a receipt it did not need registration. But as a mere receipt for so much money, if it were, in truth, limited to that, it could not prove the release or extinguishment of any particular right over the property in dispute vested in Parapa by the mortgage. It could not, therefore, show that, in subsequently admitting Parapa's claim under that mortgage, Sidoji wilfully failed to assert his own rights. It was only if his mortgage was released that Parapa's claim to possession could be unfounded, or Sidoji's admission of it could be a fraud on Kalkapa. To prove that it had [239] been released, the document No. 45, which is express to that effect, was put in, and that is exactly the use that was made of the document by the Subordinate Judge."

The Court, therefore, remands the case for a finding by the District Judge on the third and fourth issues raised by the Subordinate Judge. The District Judge will exercise his discretion as to the admission of fresh evidence as respects the said issues.

*Decree reversed and case remanded.*

4 B. 239.

APPELLATE CRIMINAL.

*Before Mr. Justice Pinhey and Mr. Justice F. D. Melvill.*

IMPERATRIX *v.* RAMA PREMA.\* [7th January, 1880.]

*The Code of Criminal Procedure (Act X of 1872), s. 18—Sentence—'Modify'—'Enhance'—Session Judge—Assistant Session Judge.*

The word 'modify' in s. 18, cl. 2 of the Code of Criminal Procedure (Act X of 1872) does not include the power to *enhance* a sentence; consequently, when an Assistant Sessions Judge passes a sentence of more than three years' imprisonment, the Sessions Judge cannot enhance it.

[R., 9 C. P. L. R. 29 (30).]

THE accused Rama Prema was tried by G. Druitt, Assistant Sessions Judge of Surat, on a charge of criminal breach of trust as a public servant,

\* Criminal Review No. 247 of 1879.

(1) 2 B. 489.