

1880
JUNE 30.
APPEL-
LATE
CIVIL.
5 B. 127.

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[127] APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice F. D. Melvill.

NARAYAN DESHPANDE (*Original Plaintiff*), Appellant v.
RANGUBAI (*Original Defendant*), Respondent.*
[30th June, 1880.]

Regulation XXVIII of 1827, s. 14, cl. 1—Mortgage—Execution—Sale—Purchaser of mortgagor's interest—Third party—Stamp—Interest—Damdupat.

The purchaser at a Court sale of the right, title and interest of the judgment-debtor is a third party within the meaning of s. 14 Reg. XXVIII of 1827, cl. 1, and therefore as against him a mortgage-deed passed by the latter to a mortgagee is valid—not from the date of its execution, but from that on which it was stamped.

Jagannath v. Apaji (1) followed.

THIS was a second appeal against the decision of W. Wedderburn, Judge of Ahmednagar, amending the decree of the Subordinate Judge of Sanganner.

The plaintiff sued to recover possession of a house which he claimed as auction-purchaser at a Court's sale, and to remove the obstruction of the defendant, who claimed to be in possession as mortgagee under two bonds, one dated 7th January 1832, for Rs. 150, and another, dated 15th May 1832, for Belapur Rs. 35. The defendant expressed her willingness to give up possession of the property on payment to her of these sums with compound interest and the expenses of repairs made by her.

The Subordinate Judge held both the bonds proved, but rejected the one of May 1832 as insufficiently stamped. He held that Rs. 250 were due on the other bond and that Rs. 7-12-0 were due on account of repairs, and made a decree accordingly.

The District Judge agreed with the Subordinate Judge in his findings as to the genuineness of the two bonds. On the point of the validity or otherwise of the bond of May 1832, he said: "It appears that originally this bond had a stamp of one anna only, whereas it ought to have borne a stamp of two annas under Sch. D of Reg. XVIII of 1827. But the Subordinate Judge has held that under s. 14 of the Regulation (2) the bond is not valid from its original date as against the plaintiff, [128] who is a third party. But I do not think the clause referred to is applicable at all, as the plaintiff, who bought the right, title and interest of the mortgagor, stands in the place of the original grantor and cannot be regarded as a third party.* * * *"

As the Subordinate Judge holds that this bond from its appearance and from the evidence of witness 19 appears to have been executed on the date it bears, I decide that it is proved."

The Judge then discussed the question as to what amount should be allowed for repairs. Finding the oral testimony and the accounts produced unsatisfactory, he decided to allow Rs. 81, being at the rate of Rs. 3 per year for 27 years.

* Second Appeal No. 147 of 1880.

(1) 5 B. H. C. R. A. C. J. 217.

(2) Section 14, clause 1 of Regulation XVIII of 1827 is as follows:—

"A bond or other writing stamped after its original date, if executed within the zillas subordinate to the Presidency of Bombay shall, so far as it is affected by the stamp, become valid against the grantor from its original date; but as to the rights of the third parties, the date of its being stamped shall be held to be its real date."

The Judge accordingly varied the decree of the Subordinate Judge confirming his decision in regard to the bond of January 1832, increasing the amount allowed for repairs from Rs. 7-12-0 to Rs. 81, and further awarding Belapur Rs. 35 with an equal amount as interest upon it. The plaintiff appealed to the High Court.

V. M. Pandit, for the appellant.—The District Judge erred in holding that the auction-purchaser was not a third party within the meaning of Reg. XXVIII of 1827, s. 14, cl. 1, and in giving effect to the bond of May 1832, as against him from the date of execution instead of from the date on which it was adequately stamped: *Jagannath v. Apaji* (1). He also erred in applying the rule of "damdupat" to the mortgage transaction in this case. He should have limited the award of interest on both the bonds to six years only: *Vithal v. Daud* (2), *Narayan v. Satvaji* (3). The sum decreed for repairs is against the provision of the bonds.

Shivshankar Govindram, for the respondent.—Even supposing the District Judge to have been wrong and the Subordinate Judge to have been right in holding that the plaintiff was a third party within the meaning of the Regulation, the decree of the former cannot be disturbed, because a reference to the High Court circulars shows that, allowing for the difference between [129] the British and Belapur rupee, the bond of May 1832 was properly stamped with a stamp of one anna.

JUDGMENT.

The judgment of the Court was delivered by

KEMBALL, J.—The first objection taken is that the lower Court was in error in holding that the appellant was not a third party within the meaning of s. 14 of Reg. XVIII of 1827, and in holding the bond of May 1832 valid as against the appellant from its original date. This appears to be so (*Jagannath v. Apaji* (1)); but it is unnecessary for us to interfere with the District Judge's decision on this point, as the stamp of one anna was sufficient under Appendix B., Reg. XVIII of 1827, to cover a sum of Rs. 32, i.e., a sum in excess of Belapur Rs. 35, the amount of the aforesaid bond. The next point is that the lower appellate Court ought to have limited the amount of interest awarded on the sum contained in the bond of May 1832 to six years only, and on this point we must allow the appeal on the authority of the rulings in *Vithal Mahadeb v. Daud valad Mahamad Husen* (2) and *Narayan v. Satvaji* (3). On the last point, viz., that the lower appellate Court was wrong in awarding anything more for repairs than the Subordinate Judge awarded, we are unable to concur with the Judge in his award of Rs. 3 per annum for 27 years and Rs. 81 in all for probable repairs. The agreement between the parties on the matter of repairs is stated in the post bond, and it was not competent to the District Judge to go outside that instrument. Apparently the mortgagee had failed to give any reliable evidence on the subject of repairs, and the Subordinate Judge made an award which the bond appears to us not to have warranted. However, against this decision the mortgagee made no appeal, so that that sum must stand.

We amend the decree of the District Judge by limiting the interest on the sum contained in Exhibit 7 to six years, and by reversing his award as to repairs, restoring that of the Subordinate Judge. Costs of this appeal to be paid by the respondent.

Decree varied.

(1) 5 B.H.C.R.A.C.J. 217. (2) 6 B.H.C.R.A.C.J. 90. (3) 9 B.H.C.R. 83.