

1880
AUG. 25.
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APPEL-
LATE
CIVIL.
—
5 B. 437.

[440]appellant Ravlojirav, *alias* Dinkarrav, was upheld. The present plaintiff Balvantrav was dispossessed on the 11th September, 1877: so he cannot have had twelve years' adverse possession of the village as against the appellant, whose title accrued in 1869 on the death of his adoptive father Tamajirav. It is unnecessary for us to say anything as to the state of the law at present with respect to alienation of *vatan* property, or of property which has been *vatani* in its nature. It is not denied that in 1840, when the alienation here took place, the village of Umbrani was a *deshgati vatan*. Tamajirav could only alienate it for his life. The alienation was, in its inception, void as against his heirs. We must, therefore, reverse the decree of the First Class Subordinate Judge, and make a decree for the defendant, with costs of suit and appeal. The plaintiff must refund to the defendant any mesne profits realized from the village (after allowing all proper expenses) since the plaintiff was put into possession of the village under the decree of the First Class Subordinate Judge, and the defendant (appellant) must be reinstated in possession.

5 B. 440.

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Nanabhai Haridas.

BHIKHA (*Original Plaintiff*), *Appellant v.* SAKARLAL (*Original Defendant*), *Respondent*.* [22nd March, 1881.]

The Code of Civil Procedure, Act VIII of 1859, ss. 268 and 269—Order—Limitation.

A purchaser of immoveable property at a Court sale, having been obstructed by the defendant, made an application to the Court, under s. 268 of Act VIII of 1859, for the removal of the obstruction, but subsequently withdrew his application. The Court thereupon made an endorsement upon the application to the effect that, as the applicant did not wish to proceed further, no investigation was made.

Held that no such order had been made as was contemplated by s. 269 of Act VIII of 1859, that section contemplating, at least, an order against one party or the other, and that, therefore, the provisions contained in the same section as to the time within which a suit must be brought, did not apply to the case of the plaintiff.

[R., 22 B. 875 (883).]

THIS was a second appeal against the decision of E. Cordeaux, Judge of Khandesh, confirming the decree of R. S. Bodas, Subordinate Judge of Shirpur.

[441] The facts sufficiently appear in the judgment of the Court.

Yashvant Vasudev Athlye, for the appellant, the original plaintiff.

Shivram V. Bhandarkar, for the respondent, the original defendant.

JUDGMENT.

The judgment was delivered by

MELVILL, J.—The plaintiff is a purchaser of immoveable property at a Court sale. Having been obstructed by the defendant, he made an application to the Court in 1873, under s. 268 of Act VIII of 1859; but, subsequently, he presented a petition, saying that he did not wish to proceed with the application. The Court thereupon made an endorsement on the application, to the effect that, as the applicant did not wish to proceed further,

* Second Appeal No. 410 of 1880.

no investigation was made, and the application was treated as disposed of. The question is whether this endorsement is such an order as brings the plaintiff within the provisions of the last paragraph of s. 269, and rendered it necessary for him to bring a suit within one year. After providing that "the Court shall inquire into the matter of the complaint, and pass such order as may be proper in the circumstances of the case," the section goes on to say, in the last paragraph, that "the order shall not be subject to appeal, but the party against whom it is given shall be at liberty to bring a suit to establish his right at any time within one year from the date thereof." The authorities are conflicting as to whether an order passed without a previous investigation, is such an order as is contemplated by the section; and on this point we do not think it necessary to give any decision. But we consider that the order contemplated must, at all events, be an order given against one party or the other; and in the present case we find it impossible to regard the endorsement of the Subordinate Judge, acquiescing in the plaintiff's request that his application should not be further proceeded with, as an order given against the plaintiff. On these grounds we reverse the decrees of the Courts below, and remand the case for retrial. Costs to follow the final decision.

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APPELLATE
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[442] APPELLATE CIVIL.

Before Mr. Justice M. Melville and Mr. Justice Nanabhai Haridas.

KANITKAR (Original Defendant), Appellant v. JOSHI (Original Plaintiff), Respondent.* [29th March, 1881.]

Registration, compulsory, optional—Priority—Act XX of 1866—Act VIII of 1871, s. 50—Act III of 1877, s. 50.

Section 50 of Act III of 1877 is not retrospective in its application; and, therefore, a deed of sale registered under Act VIII of 1871, and not having, under that Act, priority over unregistered documents relating to the same property, acquires no new rights of priority by the passing of Act III of 1877, though coming within the larger class of registered documents which, by s. 50 of the later Act, have priority over unregistered documents.

[F., 6 B. 495; R., 5 B. 653; 6 B. 168 (192); 13 B. 229; 20 B. 158 (164).]

THIS was a second appeal against the decision of C. B. Izon, Judge of Ratnagiri, confirming the decree of Rao Saheb Atchut Jagannath Ghate, Subordinate Judge of Chiplun.

The material facts are as follows:—

On 18th March, 1867, one Ganu Gopal mortgaged some property to the plaintiff's father for a sum a little less than Rs. 100. The instrument of mortgage was optionally registrable, and was not registered. No possession passed to the mortgagee at the time of executing the mortgage. But on 4th May, 1873, the plaintiff entered into possession of the mortgaged premises.

On 19th March, 1877, the proprietor passed a deed of sale of the property to the defendant for Rs. 297. This was compulsorily registrable under Act VIII of 1871, and was duly registered on the 20th March, 1877, a few days before the day (1st April, 1877), on which the Registration Act III of 1877 came into force.