

1881  
MARCH 29.  
—  
APPEL-  
LATE  
CIVIL.  
—  
5 B. 442.

refused to apply the Statute, because the words were not sufficiently clear to rebut the presumption that the Legislature [446] could not have intended to take away a vested right. Section 50 of Act III of 1877, by the alteration which it makes in the previous law, effects a mutation of title between two conflicting claimants precisely analogous to that which was caused by the first section of the English Statute; and the words of the latter section which were held not to be sufficiently clear and express to authorize a retrospective application of the section are at least as clear and express as those of the Indian Act. Indeed, they appear to us to be more so; for the express provision contained in the explanation to s. 50 of Act III of 1877, by which retrospective effect is given to the word "un-registered," in some measure suggests the inference that such retrospective effect was not intended to be given to the word "registered."

For these reasons we have come to the conclusion that the defendant's deed of sale is not, by virtue of registration, entitled to take effect against the plaintiff's deed of mortgage.

The decrees of the Courts below are confirmed with costs.

5 B. 446.

APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice,  
and Mr. Justice Nanabhai Haridas.*

SAYAJI BIN NIMBAJI (*Original Defendant*), *Appellant v. RAMJI  
BIN LANGAPA* (*Original Plaintiff*), *Respondent*.  
[26th January, 1881.]

*Mortgagee in possession—Forcible dispossession by mortgagor—Suit for possession—  
Specific Relief Act, I of 1877, s. 9—Fraud—Appeal.*

It is no answer to a suit for possession under s. 9 of the Specific Relief Act, brought against a mortgagor by a mortgagee who has been forcibly dispossessed by the mortgagor, to allege that the mortgage and possession under it were obtained by the fraud of the mortgagee. The mortgagor's proper remedy was by way of a suit to set aside the mortgage and recover possession.

[R., 2 C.P.L.R. 173; 7 C.P.L.R. 3.]

THIS was a second appeal from the decision of R. F. Mactier, Judge of the District Court of Satara, affirming the decree of P. S. Binivale, First-Class Subordinate Judge at the same place.

The plaintiff Ramji brought this suit for possession of certain land, alleging that the same had been mortgaged to him by the defendant for Rs. 300 under a deed, dated the 13th October, 1876; [447] that he had been put in possession of the land under the mortgage; that, subsequently, the mortgagor forcibly turned him out of the mortgaged premises. The plaintiff also claimed Rs. 100 as damages in respect of the crop standing on the land at the time of his dispossession, and removed by the defendant. The plaint was filed on the 13th August, 1877.

The defendant Sayaji answered, *inter alia*, that the plaintiff had caused the mortgage-deed to be executed, and obtained possession of the mortgaged land by fraud.

The Subordinate Judge held the mortgage-deed proved, and awarded the plaintiff possession of the mortgaged land, together with Rs. 100 as compensation for the crop removed by the defendant.

In appeal, the District Judge remanded the case to the First Court for its trial on the two issues: first, whether the plaintiff had obtained possession of the land under his mortgage-deed; and, secondly, whether he had been subsequently forcibly turned out of it by the defendant. On remand, the Subordinate Judge found that the defendant had dispossessed the plaintiff after he had been put in possession of the land as mortgagee. He, accordingly, made a decree in favour of the plaintiff for possession of the mortgaged property until satisfaction of the mortgage-debt, and awarded Rs. 100 as damages for loss of his crop. This decree was affirmed by the District Judge on appeal (28th June, 1880).

The defendant thereupon appealed to the High Court on the 2nd October, 1880.

*G. R. Kirloskar* appeared for the appellant (defendant).

*Shivram V. Bhandarkar* (for *Shantaram Narayan*) took a preliminary objection on behalf of the respondent (plaintiff), that as the suit was one for possession under s. 9 of the Specific Relief Act I of 1877, no appeal lay to the High Court. The objection, however, was not pressed.

#### JUDGMENT.

The following is the judgment of the Court delivered by

WESTROPP, C.J.—Assuming for the moment, without in any way deciding, that the mortgage and possession under it were fraudulently obtained by the plaintiff Ramji, the defendant [448] Sayaji's proper course was to have brought his suit to have the mortgage set aside, and possession restored to him. He had not any right to dispossess the mortgagee without the intervention of a Court of Justice having jurisdiction for the purpose. The case being so clear on the merits, we have not considered the preliminary point as to whether the appellant was entitled to an appeal, and on that point we give no decision.

We affirm the decree with costs.

*Decree confirmed.*

5 B. 448.

#### APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice,  
and Mr. Justice Birdwood.*

BHULJI BECHAR (*Decree-holder*) v. BAVAJI DAJI AND OTHERS  
(*Judgment-debtors*). \* [1st March, 1881.]

*The Broach and Kaira Encumbered Estates Act XIV of 1877, s. 19—“Suit”—Applications for execution—Limitation.*

The term “suits” in the last paragraph of s. 19 of Act XIV of 1877 includes application for execution of decrees.

UNDER s. 617 of the Civil Procedure Code (Act X of 1877), Rao Sahab R. K. Desai, Subordinate Judge of Borsad, stated the following case, with his opinion thereon, for the decision of the High Court:—

“The decree-holder Bhulji Becharadas obtained a decree in suit No. 1507 of 1875, for Rs. 17-1-0 and costs, on the 27th September, 1875,

\* Civil Reference No. 4 of 1881.