

## APPELLATE CIVIL.

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice M. Melvill.

HASHA (ORIGINAL PLAINTIFF), APPELLANT, v. RAGHO AMBO GONDHALI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.\*

1881

January 25.

*Registration—Notice—Priority—Possession—Vendor and purchaser—Purchaser without possession—Subsequent purchaser with possession and without notice of prior purchase.*

The plaintiff purchased the land in dispute on the 28th February, 1878, and on the same day lodged his deed of purchase with the registrar together with the registration fee. It was registered on the 29th April, 1878. He was not put in possession of the property.

The defendant purchased the same property on the 1st April, 1878, and on the following day lodged his deed of purchase with the registrar together with the registration fee. It was registered on the 26th May, 1878. His purchase was accompanied with possession.

In a suit brought by the plaintiff against the vendor and the subsequent purchaser for possession of the property,

*Held* that the registration of the plaintiff's deed of purchase, not having been effected until after the execution of the defendant's deed, could not have operated as notice of the plaintiff's deed to the defendant, and, therefore, could not be equivalent to possession.

*Held*, also, that as the defendant was a purchaser without notice, either actual or constructive, of the plaintiff's prior purchase, and had taken the precaution of obtaining possession, both parties being Hindus and innocent purchasers, the defendant could not be deprived of the benefit of his possession.

*Lalubhai Surchand v. Bai Amrit* (1) followed.

THIS was a second appeal from the decision of C. E. G. Crawford, Assistant Judge at Thana, reversing the decree of Ramchandra Janardan, Second Class Subordinate Judge of Panvel.

The Plaintiff Hasha brought this suit against Kalia (defendant No. 1) for possession of certain land, alleging that he had purchased it from the defendant on the 28th February, 1878, for Rs. 100. He further alleged that he had paid Rs. 10 as earnest-money to the defendant, and was to pay the balance on the registration of the deed of purchase; that it was registered on the 29th April, 1878, but that the defendant refused to receive the

\* Second Appeal, No. 312 of 1880.

(1) I. L. R. 2 Bom. 299.

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balance and to put the plaintiff in possession of the land. The plaintiff prayed that he might be put in possession, and the defendant directed to receive the balance.

Kalia (defendant No. 1) answered, among other things, that, in consequence of the plaintiff's default in paying the balance, he sold the land with possession to Ragho (defendant No. 2), to whom it had already been mortgaged; that the plaintiff's purchase was without possession, and, therefore, null and void. Ragho, who was subsequently joined as defendant, answered that he had purchased the land from defendant No. 1 for Rs. 100 on the 1st April, 1878; that his deed was registered on the 26th May, 1878; that the land had been in his possession and entered in his name in the Collector's books; that he cultivated it, and thus became a complete owner of it.

The Subordinate Judge allowed the plaintiff's claim, and directed that he should pay Rs. 90 to the defendants, and that they should put him in possession of the land.

In appeal, which was preferred by defendant No. 2 (Ragho), the decree of the first Court was reversed by the Assistant Judge on the 2nd June, 1880. The following are his reasons:—

“ Plaintiff's (respondent's) deed of sale, executed on the 28th February, 1878, was presented for registration the same day, but the registration was not effected till the 29th April. Appellant's deed of sale, executed 1st April, was presented for registration the next day, but registration was not effected till 26th May. Plaintiff has never been in possession. Appellant has acquired possession. Appellant had no notice of the sale to plaintiff. Section 47 of the Registration Act III of 1877, which was relied on for him, refers to the operation of the deed as such, not to the operation of the registration as a notice. I must hold that registration did not operate as a notice till it was completed. \* \* \* Both deeds, therefore, being registered, they must be weighed against each other according to Hindu law, when appellant's being accompanied by possession will prevail (*Lalubhai Surchand v. Bai Amrit*<sup>(1)</sup>).

(1) I. L. R. 2 Bom. 299.

The plaintiff thereupon appealed to the High Court.

The Hon. Rao Saheb *V. N. Mandlik* for the appellant.—The defendant's purchase had no priority over the plaintiff's. The plaintiff's deed being registered, and being held proved, operated as a complete conveyance from the date of its execution. The vendor having sold his title under a registered deed, had nothing more to sell at the date of the second sale.

*Pandurang Balibhadra* for the respondents.

The High Court affirmed the decree of the Assistant Judge.

The Hon. Rao Saheb *V. N. Mandlik* subsequently applied for a review on behalf of the plaintiff, but his application was rejected by the High Court on the 25th January, 1881. The following is the judgment of the Court :—

WESTROPP, C.J.—The facts, as now brought before us, are that the plaintiff (appellant) lodged his deed of purchase, dated 28th February, 1878, with the sub-registrar of Panvel on that day together with the registration fee, and on the same day the vendor admitted in the presence of the sub-registrar execution of that deed. It was not registered until the 29th April 1878. The second purchaser (the defendant) Ragho lodged his deed of purchase (dated the 1st of April, 1878,) upon the 2nd April, 1878, together with the fee for registration, and the vendor, then admitted the execution of it in the presence of the same sub-registrar, but that deed was not registered until the 26th May, 1878. The registration of the plaintiff's deed of purchase, not having been effected until after the execution of the defendant Ragho's deed of purchase, could not possibly have operated as notice to Ragho of the plaintiff's deed, and, therefore, could not be equivalent to possession. The sub-registrar, with whom both deeds were lodged for registration, we are informed by the report of the Registrar-General of Assurances, absconded, taking with him the registration fees, and leaving the deeds unregistered. The plaintiff was not in fault, so far as regarded the registration of his deed. He had done all that was in his power and required by law to accomplish its registration. But the defendant Ragho was a purchaser without notice (either actual or constructive) of the plaintiff's purchase, and had taken the precaution of obtaining possession.

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Both parties being innocent purchasers and Hindus, we cannot deprive the defendant Ragho of the benefit of his possession. The case, we still think, comes within the principle on which *Lalubhai Surchand v. Bai Amrit*<sup>(1)</sup> was decided, and we must, therefore, decline to make an order *nisi* for review.

(1) I. L. R. 2 Bom. 299.

## APPELLATE CIVIL.

### FULL BENCH.

Before Sir M. R. Westropp, Kt., Chief Justice, Mr. Justice Melvill, and Mr. Justice Kemball.

LAKSHMANDAS SARUPCHAND (ORIGINAL PLAINTIFF), APPELLANT, v.  
DASRAT (ORIGINAL DEFENDANT), RESPONDENT.\*

1880  
August 30.

*Registration—Priority—Possession—Notice—How far registration equivalent to possession—Priority between registered and unregistered documents—Optional and compulsory registration—Mortgage—Indian Registration Acts—Bombay Regulation IX of 1827—Acts I of 1843, XIX of 1843, XVI of 1864—XX of 1866—VIII of 1871—III of 1877—Lis pendens.*

It is a general, but not an invariable, rule that possession in the grantee or assignee is deemed essential amongst Hindus and Mahomedans to the complete transfer of immoveable property, either by gift, sale, or mortgage.

Exceptions to the above rule pointed out.

Neither in England nor in Ireland has mere registration been held to amount to notice to subsequent mortgagees or purchasers. In Bombay the Courts have adopted the rule which prevails in America, and have held that registration does amount to notice to all subsequent purchasers of the same property.

Possession has been deemed by Hindu and Mahomedan law, as interpreted in the Presidency of Bombay, to amount to notice of such title as the person in possession may have; and any other person who takes a mortgage or other charge upon immoveable property without ascertaining the nature of the claim of him who is, in possession, does so at his own risk. This is the rule in England also.

The Indian Registration Acts prior to the year 1864, like the Middlesex Registry Act (Stat. 7 Anne, c. 20, sec. 1); the Yorkshire Registry Acts (Stat. 2 and 3 Anne, c. 4, sec. 1; 6 Anne, c. 35, sec. 1; 8 Geo. II, c. 6, sec. 1), and the Irish Registry Act (Stat. 6 Anne, c. 2, sec. 4, Ir.) gave priority of rank to priority of registration. The later Indian Registration Acts—viz., Act XVI of 1864, XX of 1866, VIII of 1871, and III of 1877—proceed upon a different principle. Under them a registered instrument operates from the time at which it would have commenced to

\* Second Appeal, No. 172 of 1880.