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tigation and adjudication together, the District Judge ought to have dealt with them together, and determined whether on any view of the case before him the plaintiffs were entitled to a decree. If they were not so connected, it cannot be said that the former adjudication constitutes a *res judicata* for the purposes of the present case, and in this sense I answer the reference.

PINHEY, J.—I concur with my brother West, and have nothing to add to the reasons which he has given for the conclusion at which he has arrived.

The Court accordingly confirmed the decrees of the lower Courts, which on the merits of the case had directed that the defendants should make over the land in the plaint mentioned to the plaintiffs, and also pay Rs. 450 as damages for loss of profits sustained by the plaintiffs during the time the defendants were in wrongful occupation of it.

Decrees confirmed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Melvill.

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January 22,

SANTA'YA MANGARSAYA (ORIGINAL PLAINTIFF); APPELLANT, v.
NA'RAYAN AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Registration—Priority—Act No. III of 1877, Sec. 47—Possession—Notice.

The plaintiff purchased certain land by a deed dated the 8th April, 1879. The deed was registered on the 26th August of the same year. The defendant purchased the same land by a deed dated the 14th June, 1879. It was registered on the same day. That deed recited that the land was in the possession of the plaintiff as tenant. Both the deeds were optionally registrable. The Subordinate Judge rejected the plaintiff's claim, and awarded the land to the defendant. His decree was affirmed, in appeal, by the District Judge on the ground that the defendant's deed was registered before the plaintiff's deed. On appeal to the High Court,

Held that the plaintiff was entitled to the land. Both the deeds having been registered according to law, they operated from their respective dates of execution as provided by section 47 of the Registration Act No. III of 1877.

Held, also, that the defendant had notice of the plaintiff's equitable title to the land.

THIS was a second appeal from the decision of S. Tagore, Judge of the District Court of Kánara, affirming the decree of the Second Class Subordinate Judge of Kumta.

*Second Appeal, No. 612 of 1881.

The plaintiff Santáya brought this suit to establish his right to certain land as purchaser, and to set aside a deed of sale executed by defendant No. 1 in favour of defendant No. 2. The plaintiff alleged that defendant No. 1 sold the land in dispute to him (plaintiff) for Rs. 70, and executed to him a deed of sale, dated the 8th April, 1879, agreeing to receive the purchase money at the time of the registration of the deed; that he (defendant No. 1) afterwards denied the execution of the deed before the Sub-Registrar; that the plaintiff thereupon applied to the Deputy Registrar, and obtained an order for its registration on the 25th August, 1879; that in the meantime the defendant fraudulently executed a deed of sale to defendant No. 2 on the 14th June, 1879.

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Defendant No. 1 denied the execution of the deed of sale to the plaintiff, and stated that he had sold the land to defendant No. 2, and received the value from him. Defendant No. 2 answered that he was a *bonâ-fide* purchaser for valuable consideration, and that plaintiff's deed was fraudulent.

The Subordinate Judge held that the plaintiff's deed was fraudulent, and that defendant No. 2 was a *bonâ-fide* purchaser for valuable consideration. He, accordingly, rejected the plaintiff's claim, and awarded the land to defendant No. 2.

On appeal, the District Judge affirmed the decree of the first Court. The following extract from his judgment contains his reasons:—

“I find the true state of facts to be this. The first defendant sold the land in dispute to plaintiff for Rs. 70, and executed a deed of sale. Having subsequently received a higher offer for the land from the second defendant he changed his mind, refused to complete the prior sale by registration, and executed another deed of sale in favour of defendant No. 2, and got it registered. At the same time I do not find it proved that defendant No. 2 had notice of the previous sale. I take him to be a *bonâ-fide* purchaser for value without notice. Another circumstance necessary to be stated here is that plaintiff appears to have been in possession at the time of the sale, though his possession was that of a tenant, and no formal delivery of possession was made

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to him under his deed. Upon this state of facts the question arises, which of the two sales is entitled to precedence—that to plaintiff or that to defendant No. 2? I think I must find in favour of the latter. I am of opinion that plaintiff, who had not paid the purchase money and whose deed was registered subsequently to that of defendant No. 2, is not entitled to succeed. The second defendant's title was completed by registration on the 14th June, 1879, while plaintiff did not succeed in getting his document registered till August, 1879. I think the former has the better title.

The plaintiff appealed to the High Court.

N. G. Chandavarkar for the appellant.—The decision of the District Judge is contrary to the facts which he has held proved. Both the deeds are registered. The Judge, therefore ought to have applied section 47 of the Registration Act No. III of 1877 to the case. Both the parties are held to be *boná-fide* purchasers, and as they are Hindus, the principle adopted by this Court in *Lalubhai Surchand v. Bári Amrit*⁽¹⁾ and in *Hasha v. Rágho*⁽²⁾ applies. The plaintiff was admittedly in possession of the land at the time of his purchase. His title, therefore, was complete. No formal delivery of possession was necessary. Moreover, the defendant's deed recited that the land was in the possession of the plaintiff. That recital was a sufficient notice to him of the plaintiff's title. He was not, therefore, a *boná-fide* purchaser.

G. N. Nádkarni for the respondent No. 2 (defendant No. 2).—The Judge has found as a fact that the defendant No. 2 was a *boná-fide* purchaser for value without notice. That finding is conclusive. The plaintiff cannot rely upon his possession, because the Judge has held that no possession was given to him under his deed. The learned pleader relied upon *Nárdin Chunder Chuckerbuttery v. Datáram Roy*⁽³⁾.

SARGENT, C. J.—The Judge was wrong in attaching importance to the circumstance of the plaintiff's deed being registered subsequently to that of the defendant. As both deeds of sale were registered according to law, they would operate from their

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

(2) I. L. R., 6 Bom., 165.

(3) I. L. R., 8 Calc., 597.

respective dates of execution as provided by section 47, and the rights of the parties must be determined by Hindu law. Now it might, we think, be fairly contended that the plaintiff's title was completed by possession, the plaintiff being in possession at the time of the sale to him as *chalgeni* tenant and being directed by his sale-deed to pay the *mulgeni* rent thenceforth to the persons entitled to it. But, assuming that his title was not completed by possession, still the defendant No. 2 had notice of the fact, as recited in his deed of sale, that the land was in the possession of the plaintiff as tenant, and must according to the decision ~~in~~ *Muncherji Sorabji Chulla v. Kongseoo*⁽¹⁾; *Kanáyáálál v. Pyárábái*⁽²⁾—be deemed to have had notice of the plaintiff's equitable title to the lands. The decrees of the Courts below must, therefore, be reversed, and a declaration made that plaintiff is entitled to the land in question on payment of Rs. 70 to the second defendant in part payment of the money which the latter is entitled to recover from the representatives of the first defendant, Náráyan.

The representatives of the first and second defendants to pay the plaintiff's costs throughout, with liberty to the representatives of the second defendant to recover such sums as he may pay in respect of such costs from the representatives of the first defendant.

Decrees reversed.

(1) 6 Bom. H. C. Rep., O. C. J., 59.

(2) I. L. R., 7 Bom., pp. 139, 145.

APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice Pinhey.

SADA'SHIV LALIT (ORIGINAL PLAINTIFF), APPELLANT, *v.* JAYANTIBAI,
WIDOW OF GOVIND PA'DHYE (ORIGINAL PLAINTIFF), RESPONDENT.*

January 30.

Decree—Execution—Civil Procedure Code (Act X of 1877), Sec 266—Sale in execution—Vritti.

Where the decree of a Civil Court expressly declares that a person's right in a *vritti* shall be sold, it is not competent in execution proceedings to question the command, on the ground of the *vritti* being protected from sale under section 266 of the Code of Civil Procedure, or from its being by the nature of it unsaleable to the public at large.

* Second Appeal, No. 24 of 1882.