

APPELLATE CIVIL.

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

DUNDA'YA (ORIGINAL DEFENDANT), APPELLANT, *v.* CHENBASAPPA
(ORIGINAL PLAINTIFF), RESPONDENT.*

1883.

March 9.

*Registration—Acts XX of 1866, VIII of 1871, and III of 1877, Sec. 50—Priority
—Effect of possession under earlier unregistered document—Notice.*

The plaintiff and the defendant claimed certain land, the latter under an unregistered deed of sale dated the 1st April, 1877; the former under a registered deed of mortgage of later date, *viz.*, the 19th September 1877. The defendant alleged that immediately after his purchase he was put into possession of the field; and had been in possession ever since. Both the lower Courts held that the plaintiff was entitled to the land. On appeal to the High Court,

Held, that, assuming that the defendant had been in possession when the mortgage deed was executed to the plaintiff, or that the plaintiff had otherwise notice of the defendant's prior purchase, the plaintiff could derive no advantage from the registration of his mortgage—possession by, or registration of the title of, a purchaser or mortgagee prior in point of time being notice of that title to subsequent purchasers and mortgagees.

THIS was a second appeal from the decision of C. F. H. Shaw, District Judge of Belgaum.

Three brothers—*viz.*, Ningápa, Dhulápa and Chenbasápa—were joint owners of a field which stood in the sole name of the eldest brother Ningápa on the revenue register. On 1st April, 1877, Ningápa sold it to the defendant for less than one hundred rupees; and on 19th September, 1877, he, (Ningápa), mortgaged it to the plaintiff for Rs. 250. The plaintiff registered his deed of mortgage, and subsequently brought a suit against the three brothers on the mortgage, and obtained a decree. On attempting to take possession he was obstructed by the defendant. The plaintiff thereupon sued the defendant for possession.

The defendant alleged that he had purchased the land for Rs. 98, and had been in possession ever since the date of his purchase, which was prior to the plaintiff's mortgage; and he contended that he was, therefore, entitled in priority to the plaintiff.

The Subordinate Judge of Belgaum passed a decree for the plaintiff, being of opinion that the plaintiff's deed of mortgage,

* Second Appeal, No. 119 of 1882.

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being registered, should have priority over the defendant's unregistered deed of sale, under section 50 of Act III of 1877.

The defendant appealed to the District Judge of Belgaum, who confirmed the lower Court's decision.

The defendant preferred a second appeal to the High Court.

Ganesh Rámchandra Kirloskar for the appellant.

Dáji Abdji Khare for the respondent.

SARGENT, C. J.—Both the parties to this suit claim through three brothers, Ningápa, Dhulápa and Chenbasápa. The plaintiff by a registered deed mortgaged to secure Rs. 250, dated 19th September, 1877, and defendant by an unregistered deed of sale for less than Rs. 100, dated the 1st April, 1877. Both the Courts below held that the plaintiff's registered deed must prevail, having regard to section 50, Act III of 1877. Defendant by his written statement pleaded that he had been put into possession at the time of the sale to him, and had since occupied as owner; and it has been argued before us that, assuming that to have been so, the plaintiff would not be entitled to priority.

It must be taken, we think, as settled law in this Presidency that a subsequent registered purchaser or mortgagee is not to be preferred against a prior unregistered purchase or mortgage of which he had notice—*Shivrám v. Genu* ⁽¹⁾, and, further, that possession by, or a registration of, the title of a purchaser or mortgagee prior in point of time is notice of that title to subsequent purchasers and mortgagees—*Lakshmandás Sarupchand v. Dasrat* ⁽²⁾. The above decisions were under the Act XX of 1866; but as the language employed in section 50 of the Acts of 1871 and 1877, by which preference is given to registered documents, is the same as that used in section 50 of Act XX of 1866, the principle established by those decisions is equally applicable to the recent Acts. See also *Wáman Rámchandra v. Dhondiba Krishnáji* ⁽³⁾, where the case fell under Act VIII of 1871. Assuming, therefore, that the defendant was in possession when the mortgage deed was executed to plaintiff, or that plaintiff had

(1) I. L. R., 6 Bom., 515.

(2) I. L. R., 6 Bom., 168.

I. L. R., 4 Bom., 126.

otherwise notice of defendant's purchase, it is clear that the latter could derive no advantage from the registration of his mortgage.

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We must, therefore, send back the case for the Judge to record a finding on the following issue, after taking such evidence as the plaintiff and defendant may wish to give, and having regard to the above remarks:—

Had the plaintiff notice of the defendant's sale, exhibit 3, when the mortgage (exhibit 32) was executed to him?

And send back the finding to this Court.

Case sent back.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice
Nánabhái Haridás.*

AKOBA DA'DA', MINOR, BY HIS MOTHER (ORIGINAL PLAINTIFF), APPELLANT,
v. SAKHA'RA'M AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1885.

March 11.

*Minor—Suit against widowed mother alone how far binding on the minor—Parties
—Representation—Sale of equity of redemption—Mortgage—Redemption.*

A widow does not represent the estate so as to bind the son when the existence of the minor son is, from whatever cause, altogether ignored, and there is nothing on the face of the proceedings to show that she is sued as representing the minor son.

Accordingly where the plaintiff, a minor, sought to redeem a certain property from the defendant who had purchased the equity of redemption at an auction sale in execution of a decree obtained against the plaintiff's mother alone as representative of her deceased husband,

Held, that the plaintiff was entitled to redeem. The plaintiff having been ignored, the inheritance had not been substantially represented in the suit against his mother alone, and the plaintiff's right to the equity of redemption consequently remained unaffected by the sale to the defendant.

THIS was a second appeal from the decree of R. F. Mactier, District Judge of Sátára.

The plaintiff, a minor, by his mother and as next friend sued to redeem certain land which had been mortgaged by his deceased father, Dáda, for Rs. 600 to the father of the first defendant. The plaintiff alleged that the debt had been paid off.

* Second Appeal, No. 4 of 1883.