APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

1886. *August* 18.

VISHNU SAKHA'RA'M PHA'TAK, (ORIGINAL PLAINTIFF), APPELLANT, *v.* KA'SHINA'TH BA'PU SHANKAR, (ORIGINAL DEFENDANT), RESPONDENT.*

Mortgage with proviso that in case of non-redemption in a prescribed time it should become a sale—Rázinámá by mortgagor declaring sale to mortgagee—Transfer of possession to mortgagee—Extinction of the equity of redemption—Subsequent sale by mortgagor of equity of redemption—Mistake of law not a ground for setting aside a conveyance, unless induced by fraud or misrepresentation—Indian Contract Act (IX of 1872). Sec. 21—Mistake of law.

In 1848, B. and R. mortgaged a piece of land to V. It was to be redeemed in eight years, or else to become the absolute property of the mortgagee. It was not redeemed; and in 1859, B., in whose name the land was entered in the Government records, executed a *rázinámá* in favour of V., and V. passed a *kabuláyat* accepting the land. B. and R. then became V.'s tenants, and were, as such, successfully sued by him for rent in 1863. In 1872, V. sold the land to N., who again sold it to the defendant. The plaintiff, as purchaser from the original mortgagors (B. and R.) of their alleged equity of redemption, filed the present suit to redeem the property.

Held, that as the *rázinámá* given by B. contained no reservation, and as it was accompanied by a transfer of possession, it had the effect of a conveyance of all the mortgagor's rights to the mortgagee. It operated to extinguish the equity of redemption, notwithstanding any misconception or ignorance, on B.'s part, of his rights as mortgagor.

Under the Indian Contract Act IX of 1872, sec. 21, error of law does not vitiate a contract, much less will it annul a conveyance after the lapse of many years, unless there has been some fraud or misrepresentation and an absence of negligence.

THIS was a second appeal from the decree of H. J. Parsons, District Judge of Thána, in Appeal No. 89 of 1884.

On the 21st October, 1848, Bábáji and Rámchandra mortgaged certain property to Vishnu Harishankar to secure an advance of Rs. 104. The mortgage-bond contained a *gahán lahán* clause to the effect, that if the mortgaged property were not redeemed in eight years, it would pass to the mortgagee as owner.

The property was not redeemed; and on the 4th January, 1859, Bábáji, in whose name it was entered in the Government records, passed a *rázinámá* to Government in Vishnu's favour. Therein

* Second Appeal, No. 670 of 1884.

he writes: "I of my own free will have sold this land to Vishnu Harishankar. So having taken the same from my name, you should cause it to be transferred to his name. I have no further right, title, or interest in the said land."

At the same time, Vishnu passed a *kabuláyat*, accepting the land, subject to the Government assessment.

The *rázinámá* and *kabuláyat* were followed by a transfer of possession. Bábáji and Rámchandra became tenants of Vishnu under a rent-note, upon which a decree was passed against them for rent in 1863.

In 1872, Vishnu sold the land to Náráyan, and Náráyan to the defendant, who had been in possession ever since.

The plaintiff, having purchased the alleged equity of redemption from the original mortgagors, Bábáji and Rámchandra filed the present suit to redeem the land.

Both the lower Courts dismissed the suit, on the ground that the *rázinámá* passed by Bábáji had the effect of extinguishing the equity of redemption.

Shámráv Vithal for the appellant.

Mahádev Chimnáji Apté for the respondent.

WEST, J.:—Bábáji and Rámchandra in 1848 mortgaged the property in dispute to Vishnu. It was to be redeemed in eight years, or else pass to the mortgagee as owner. It was not redeemed; and in 1859 the mortgagor, Bábáji, in whose name the land was recorded in the Government register, executed a surrender of it. At the same time, Vishnu executed a *kabuláyat* accepting the land, subject to the usual land-tax. The former mortgagors became his tenants, and were, as such, successfully sued by him for rent in 1863. The rent was at the rate of three *khandis* of rice *per annum*, the interest on the mortgage having been one *khandi*.

In 1872, Vishnu sold the land, and his vendee sold it to the present defendant, Khanderáv.

The present plaintiff is a purchaser, from the original mortgagors, of their alleged equity of redemption, and he sues to redeem the land, relying on the Limitation Act, which allows sixty years

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for such a suit. The surrender by Bábáji, it is said, was induced by a misconception of his true legal position, and is to be regarded merely as an act in fulfilment of the duty, as he thought, thrown on him by the mortgage, which, in fact, placed him under no such obligation.

Now the mortgage either did place Bábáji under this obligation to complete a transfer to Vishnu, or it did not. If it did, then Vishnu's title was simply completed by Bábáji's doing what he was bound to do. If it did not, then the surrender to the Government, made three years after the mortgage term had expired, must naturally be referred to some other cause. It was, at any rate, a transfer made in the form then and now usual—*Taráchand Pirchand* v. *Lakshman Bhavani* (1). The surrender to the Government could not be questioned by the occupant, nor its right to give the occupancy surrendered to a fresh holder. Had the surrender been induced by any fraudulent artifice on the part of Vishnu, the surrenderors might, no doubt, have called on Vishnu and his successors, so long as they could do so, to atone for the wrong by a retransfer on equitable terms, but this could not be done as against a purchaser in good faith from one to whom the mortgagors themselves had conveyed an apparently complete title. "When parties join in a conveyance to a purchaser, all their rights ought to be considered as transferred to him, unless any of them are specially reserved." More particularly is this so where an owner does all that is usually required to pass the ownership. Nothing was reserved as against Vishnu, and the decision as to rent in 1863 was virtually a judgment against the existence then of the mortgage. Bábáji may have been ignorant of the rights discovered for mortgagors in the subsequent case of *Rámji* v. *Chinto* (2), but that ignorance was not of a character to nullify the surrender and the agreement by which Vishnu replaced him as occupant. The English Courts of Equity relieve against agreements induced by an error of law in certain cases; but in the present instance we have the principle before us of the Indian Contract Act that an error of law does not vitiate a contract. Much less will it annul a conveyance after the lapse

(1) I. L. R., 1 Bom., 91. (2) 1 Bom. H. C. Rep., 199.

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of many years, unless there has been some fraud or misrepresentation and an absence of negligence. The parties to the transfer in 1859 stood on a precisely equal footing, and no just claim remained afterwards to Bábáji and Rámchandra to call on Vishnu, much less on the present defendants, for a surrender in their favour as mortgagors.

We, therefore, confirm the decree of the District Court with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1886. *September* 21.

SOUDE SHRINIVASAPA, (ORIGINAL PLAINTIFF), APPELLANT, *v.* KRISHNAPA HEGDE, (ORIGINAL DEFENDANT), RESPONDENT.*

Practice—Statement of claim in the decree of Appeal Court not a part of the decree—Civil Procedure Code (Act XIV of 1882), Secs. 579 and 587.

On a second appeal the High Court awarded the plaintiff's claim with costs throughout; but the claim, as stated in the paper book of appeal, differed from the claim as it had been stated in the plaint.

Held, that the award of the claim was to be understood as referring to the claim as stated in the plaint, and not as described in the paper book. Sections 579 and 587 of the Civil Procedure Code (Act XIV of 1882) do not require the claim to be stated in the decree, so as to make such statement a part of the decree itself.

THIS was a second appeal from the decision of G. Druitt, Acting District Judge of Kánara.

In a suit brought by the plaintiff against the defendant, both the lower Courts having given a decree against the plaintiff, he preferred a second appeal to the High Court, which reversed those decrees, and awarded the plaintiff's claim with costs throughout. According to the usage of the office, the claim was set forth in the paper book of appeal, and the decree was drawn up in accordance with it.

The plaintiff presented a *darkhást* for execution of the decree to the Subordinate Judge of Sirsi, and prayed for interest, as stated in the plaint, up to the date of satisfaction of the decree. The Subordinate Judge, finding no express award of such interest

* Second Appeal, No. 432 of 1884.