

two separate jurisdictions: first, that of a Small Cause Court Judge; second, that of a Subordinate Judge—*Balkrishna v. Lakshman* (1). Under the first he can try the claim of the plaintiff, and under the second he can try the set-off of the defendant.

JUDGMENT.

SARGENT, C.J.—We think there is no objection to the Subordinate Judge trying the set-off pleaded by the defendant. He is not the Judge of two Courts, but has two jurisdictions—*Malhari* [33] v. *Narso Krishna* (2)—and will exercise his Small Cause Court jurisdiction in trying the claim made by the plaintiff and his ordinary jurisdiction in trying the set-off; and as he is governed by the Code of Civil Procedure in his procedure—*Bhagvan Dayalji v. Balu* (3)—he will set-off the one debt against the other as provided by s. 111.

1887
JUNE 27.
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APPEL-
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12 B. 31.

12 B. 33.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Nanabhai Haridas.*

GOVINDRAV AND ANOTHER (Original Plaintiffs) Appellants v. RAVJI
AND ANOTHER (Original Defendants), Respondents.*

[5th July, 1887.]

Mortgage—Subsequent assignment of the equity of redemption by the mortgagor—No notice to mortgagees of such assignment—No change of name in Collector's books—Further advances by mortgagees to original mortgagor on same security—Suit by assignee of equity of redemption to redeem—Liability of assignee to pay off the further advances to mortgagor—Standing by—Allowing original mortgagor's name to remain in Collector's books.

In order to complete an assignment of an equitable estate in immoveable property it is not necessary by English law that notice of the assignment should be given to the owner of the legal estate. Nor is there any rule of Hindu law which requires notice to be given to the person in possession whose position may be considered analogous to the holder of the legal estate in English law.

By a registered mortgage-deed, P. in 1869 mortgaged certain property with possession to the defendants. In 1871, P. sold his equity of redemption to the plaintiffs, who allowed it to remain in P's name on the Collector's register. Subsequently, in 1873, the defendants made further advances to P. on the security of the same mortgaged property. The plaintiffs sued to redeem. The Court of first instance rejected the plaintiffs' claim, being of opinion that their purchase was not proved. On appeal, the District Judge reversed the decree, holding that the sale to the plaintiffs was proved. He held, further, that the plaintiffs could not redeem without paying off the further advance made by the defendants in 1873, on the ground that the plaintiffs had given no notice of their purchase to the defendants, and had allowed Pandoji's name to remain on the Collector's register as the ostensible owner.

The plaintiffs appealed to the High Court.

Held, that the plaintiffs' title as assignee of the equity of redemption was complete, although no notice of the assignment had been given to the defendants. [34] But, although such notice was not necessary to complete the plaintiffs' title, it was plain, upon general principles of equity, that if the plaintiffs' conduct was such as to amount to a standing by and allowing the defendants to make further advances to Pandoji under the supposition that he was still the

* Interlocutory Judgment in Appeal, No. 200 of 1885.

(1) 3 B. 219.

(2) 9 B. 174.

(3) 8 B. 230.

1887
JULY 5.

APPEL-

LATE
CIVIL.

12 B. 33.

owner of the equity of redemption, such conduct would give the defendants a better equity. If the property was standing in Pandoji's name in the Collector's books, the allowing it so to remain after the assignment would be sufficient for the purpose.

THIS was a second appeal from a decision of E. T. Candy, District Judge of Ratnagiri.

In 1869 one Pandoji by a registered deed mortgaged the property in dispute to the defendants with possession, and in 1871 he sold his equity of redemption to the plaintiffs, who omitted to get it transferred to their name on the Collector's register.

In 1873, Pandoji obtained from the defendants further advances on the security of the same property.

The plaintiffs brought the present suit to redeem the property from the defendants.

The defendants impeached the sale to the plaintiffs as fraudulent, and contended that the plaintiffs were not entitled to redeem.

The Court of first instance held the alleged sale to the plaintiffs not proved, and rejected their claim.

The plaintiffs appealed to the District Judge, who held the sale proved, and reversed the lower Court's decree, with the following remarks:—

" * * * The fact is, Pandoji, having no son of his own, was very willing in 1871 to sell his birth-right to his nephews (plaintiffs) for Rs. 45. They allowed him to remain the nominal owner and he recklessly borrowed further sums on the property, but they have every right now to redeem it. The next question is, what sum is due to the defendants? Plaintiffs' *vakil* admits the sum due on the registered bond of 1869; but he wishes to avoid the debt of 1873. This, I think, his clients cannot do, as they did not give notice of the transfer of the equity of redemption, and allowed Pandoji to remain as the estensible owner
* * * "

The plaintiffs preferred an appeal to the High Court.

Manekshah Jehangirshah, for the appellants.—The lower appellate Court was wrong in considering a notice to the defendants [35] of the plaintiffs' purchase to be necessary. In adding the advances made by the defendants subsequently to the sale of the equity of redemption to the plaintiffs the lower Court has applied the principle of tacking which has been held not to apply to India—*Narayan Venkoba v. Pandurang Kamat* (1). See, also, Act IV of 1882, s. 2. The plaintiffs should be allowed to redeem on payment of the original debt only.

Daji Abaji Khare, for the respondents.—The defendants have been in possession and as against the plaintiffs have the legal estate in them. The defendants, therefore, have a better title than that of the plaintiffs, who have only an equitable assignment—*Thorndike v. Hunt* (2). The conduct of the plaintiffs amounts to negligence. The defendants were allowed to remain in possession, and had no knowledge of the plaintiffs' purchase when the second advance was made. The plaintiffs must suffer for their neglect—*Rice v. Rice* (3).

JUDGMENT.

SARGENT, C.J.—The facts of the case as found by the District Judge are that the defendants are the mortgagees under Pandoji by

(1) 7 B. 526.

(2) 3 De G. & Jo, 563.

(3) 2 Drew. Rep. 73.

registered mortgage of 1869; and that they afterwards made further advances to Pandoji on the same security in 1873. In the meantime, however, Pandoji had sold his equity of redemption to the plaintiffs in 1871. The District Judge held that as the plaintiffs had not given notice to the defendants of their assignment, they could not redeem the property, except on condition of paying the debt of 1873 as well as that of 1869. We do not feel sure whether the District Judge intended to hold that notice to the mortgagee in possession was necessary to complete the plaintiffs' title as assignees of the equity of redemption. By English law it is clear that the assignment of an equitable estate in immovable property is complete without notice to the owner of the legal estate—*Wilmot v. Pike* (1), where the owner of the legal estate was the first mortgagee, as in the present case. Nor are we aware of any rule of Hindu law which requires us to hold differently as regards the necessity of notice to the person in possession whose position may be considered analogous to the holder of the [36] legal estate in English law. But, although notice to the defendants was not, we think, necessary to complete the plaintiffs' title as assignees of the equity of redemption, it is plain, upon general principles of equity, that if the plaintiffs' conduct was such as to amount to a standing by, and allowing the defendants to make further advances to Pandoji, under the supposition that he was still the owner of the equity of redemption, such conduct would give the defendants a better equity. If the property was standing in Pandoji's name in the Collector's books, the allowing it so to remain after the assignment would, in our opinion, be sufficient for the purpose. We must, therefore, send back the case for a finding on the following issues:—

1. Was the property standing in the name of Pandoji in the Collector's books when the assignment was made to the plaintiffs, and, if so, did it continue to stand in his name when the further advances were made by the defendants?

2. Were the plaintiffs aware of the negotiation for the further advances by the defendants to their uncle Pandoji in 1873?

The findings to be returned to this Court within two months. Parties to be allowed to give fresh evidence.

12 B. 36.

CRIMINAL REFERENCE.

Before Mr. Justice West and Mr. Justice Birdwood.

QUEEN-EMPRESS v. TULJA AND OTHERS,* [14th July, 1887.]

Sanction to prosecute—Criminal Procedure Code (Act X of 1882), s. 195—Sub-Registrar—Forgery—Indian Penal Code (Act XLV of 1860), ss. 463, 467—Court—Judicial inquiry—Administrative inquiry.

A Sub-Registrar under the Registration Act (III of 1877) is not a Judge, and, therefore, not a 'Court' within the meaning of s. 195 of the Code of Criminal Procedure (Act X of 1882). His sanction is, therefore, not necessary for a prosecution for forgery in respect of a forged document presented for registration in his office.

The ruling in *In re Venkatachala* (2) dissented from.

* Criminal Reference, No. 72 of 1887.

(1) 5 Hare's Rep. 14.

(2) 10 M. 154.