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reverse his order and return the case that the application may be disposed of according to law.

Costs of this application to be dealt with by the District Judge when he finally disposes of the case.

*Order reversed.*

NOTE:—Section 9. Whenever there is no person on the spot entitled and willing to take charge of the property of a person deceased, where the right of succession is disputed between two or more claimants, none of whom has taken possession, or where the heirs are incompetent to the management of their affairs, from infancy, insanity, or other disqualification, and have no near relations entitled and willing to take charge on their behalf, *the judge within whose jurisdiction such property is, may appoint an administrator for the management thereof, until the lawful heir, executor, or administrator appears, or the right of succession is determined, or the disqualification of the heir is removed, as the case may be, when the Judge, on being satisfied of the facts, shall direct the administrator in charge to deliver over the property to such person, with a full account of all receipts and disbursements during the period of his administration.*

13 B. 42.

[42] APPELLATE CIVIL.

*Before Mr. Justice Birdwood and Mr. Justice Parsons.*

KEVAL VANMALI (*Original Plaintiff*), Appellant v. FAKIRA JIVAN, DECEASED, BY HIS HEIRESS, HIS SISTER, BAI LAKAI AND OTHERS (*Original Defendants*), Respondents.\* [14th February, 1888.]

*Assignment of a chose-in-action, validity of—Public policy—Indian Contract Act (IX of 1872), s. 23—Void contract—Transfer of mortgage-bond for valuable consideration.*

An assignment of a mortgage-bond for a valuable consideration is not void under s. 23 of the Indian Contract Act (IX of 1872) as being opposed to public policy.

SECOND appeal from the decree of S. Hammick, Acting District Judge of Surat, in appeal No. 26 of 1884.

The plaintiff Keval Vanmali sued to recover Rs. 198 due on a mortgage bond executed in favour of one Parshotam Bhagvan by Fakira Jivan, deceased. The bond was dated 17th October, 1871. It was assigned by Parshotam to the plaintiff for Rs. 60 some time in 1882. This suit was filed in 1883.

The defendants contended (*inter alia*) that they knew nothing of the mortgage-bond, and that the assignment in plaintiff's favour, if made at all, was of a champertous nature.

The plaintiff's evidence about the assignment was as follows:—

"I bought the mortgage-bond at my house. Parshotam came and asked me what he should do with the bond. I replied he might sue himself, or, if he liked, he might transfer it to me. He then asked me what I would pay for it; he wanted Rs. 99; I said I would pay Rs. 50. At last the bargain was struck for Rs. 60 paid at the time in cash. This was orally done. He then gave over the bond to me."

The vendor Parshotam stated as follows:—"I sold the bond at Surat in the plaintiff's house \* \* \* I went with this bond to consult a *vakil* whether any suit was maintainable thereon. I consulted no *vakil* \* \* \* I then went to plaintiff's house, because his house was close by. I showed the documents to the plaintiff, and asked him if any suit was maintainable thereon. [43] He replied that I might sell these to him, and

\* Second Appeal, No. 757 of 1885.

that he would try his luck, no matter whether any suit was or was not maintainable thereon \* \* \* I wanted Rs. 99 for the mortgage-bond; he offered Rs. 50; at last Rs. 60 was the sum fixed as the price of the bond."

The Subordinate Judge raised several issues, of which he decided the first only. This was: "Whether the mortgage-bond had been legally transferred to the plaintiff by Parshotam Bhagvandas." He found on this issue in the negative, and dismissed the suit with all costs.

On appeal the District Judge held as follows:—"The transaction appears to have been a genuine one, so far as that a real transfer of the deed for a valuable consideration took place. But that transfer was one which was opposed to public policy as being of a gambling nature. It was an act of speculation in litigation. It would, if sanctioned, encourage professional litigants to engage in doubtful claims, harassing ignorant defendants and promoting false evidence. The contract was, therefore, void under s. 23 of the Contract Act, and the appellant's suit is not maintainable."

On these grounds the decree of the Subordinate Judge was confirmed.

Against this decision the plaintiff preferred a second appeal to the High Court.

*M. M. Munshi*, for the appellant.—A chose-in-action is assignable in India—*Gokaldas Jagmohandas v. Lakhmidas Khimji*(1); *Kadarbacha Sahib v. Rangaswami Nayak* (2); *Chinnayya Rawatan v. Chidambaram Chetti* (3). The assignment in the present case is found to be for valuable consideration. Such a transaction is not invalid under the Contract Act (IX of 1872).

*Manekshah Jehangirshah*, for the respondents.—The question is, whether the transaction is opposed to public policy. I submit it is. Its tendency is to encourage litigation. Refers to *Ram Coomar Coondoo v. Chunder Canto Mookerjee* (4).

#### JUDGMENT.

[44] The judgment of the Court (BIRDWOOD and PARSONS, JJ.) was delivered by

BIRDWOOD, J.—The plaintiff in this case is the assignee of a mortgage-deed executed by the defendant to one Fakira. The District Judge finds that the transaction was a genuine one, "so far as that a real transfer of the deed for a valuable consideration took place." That being so, we do not think that he was right in rejecting the claim, on the ground that such a transfer "was an act of speculation in litigation," which "would, if sanctioned, encourage professional litigants to speculate in doubtful claims." It cannot be held that such a transaction is void under s. 23 of the Contract Act, as being opposed to public policy, inasmuch as it has long been established law in India that a chose-in-action is assignable. See *Kadarbacha Sahib v. Rangaswami Nayak*(2), *Kanhaiya Lal v. Domingo*(5); *Gokaldas Jagmohandas v. Lakhmidas Khimji*(1); *Abdool Hakim v. Doorga Proshad Banerjee*(6). The case of *Chidambaram Chetty v. Renga Krishna Muthu Vira Puchaiya Naickar*(7) was of a peculiar nature. But the principle laid down even there would not forbid the transaction now in suit. In *Chinnayya Rawatan v. Chidambaram Chetti* (3) it was ruled that, in India as in England, a mortgagee may transfer his rights to a third person by way of assignment. In places where the

(1) 3 B. 402.

(4) 2 C. 233 = 4 I. A. 23.

(6) 5 C. 4.

(2) 1 M. H. C. R. 150.

(3) 2 M. 212.

(5) 1 A. 732.

(7) 1 I. A. 241.

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Transfer of Property Act, No. IV of 1882, is in force, transfers of actionable claims are expressly allowed. We reverse the decrees of the Courts below, and remand the case for a trial on the merits. Costs to abide the result.

*Decree reversed.*

13 B. 45.

[45] APPELLATE CIVIL.

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

MORO RAGHUNATH (*Original Defendant*), Appellant v. BALAJI TRIMBAK (*Original Plaintiff*), Respondent. [1st March, 1888.]

*Mortgage—Joint owners—Mortgage of joint property by two co-owners—Subsequent mortgage of part of same property to same mortgagee by one co-owner—Suit by mortgagee on second mortgage and sale in execution—Purchase by mortgagee—Effect of such purchase on first mortgage—Subsequent suit by mortgagee on first mortgage—Apportionment of mortgage-debt.*

By a mortgage-deed, dated the 24th January 1878, Sakharam and Vishnu, two of three brothers constituting an undivided family, jointly mortgaged to the plaintiff Balaji a part of the family property. On the 28th July, 1878, Sakharam alone further mortgaged to the plaintiff for a fresh advance a portion of the property already mortgaged. Subsequently the three brothers effected a partition among themselves of all the undivided property, and the property jointly mortgaged by Sakharam and Vishnu fell, along with other property, to the share of Vishnu and the third brother Narayan.

In 1881, the plaintiff Balaji sued Sakharam on the second of the above mortgage, *viz.*, that of the 28th July, 1878. He obtained a decree, and at a sale held in execution of that decree himself purchased the property comprised in that mortgage.

In the meantime, on the 27th January, 1882, and on the 6th December, 1883, Vishnu and Narayan respectively mortgaged with possession to the defendant Moro, portions of the land comprised in the first mortgage of the 24th January, 1878.

In 1883 the plaintiff filed the present suit upon his first mortgage of 24th January, 1878, claiming to recover Rs. 316-14-0 from Sakharam and Vishnu personally. He also prayed that the defendant Moro, who had been in possession of the property in dispute, should be prevented from obstructing him in selling the property. Sakharam and Vishnu did not appear. The third defendant Moro alone appeared, and contended (*inter alia*) that the plaintiff, having sued upon his second mortgage without including the earlier one, was now barred from suing on the latter by ss. 13 and 43 of the Civil Procedure Code (XIV of 1892). He also contended that the plaintiff, having purchased part of the lands comprised in the mortgage now sued upon in execution of the decree obtained by him upon his second mortgage, could not now seek to burden the remaining lands included in the mortgage with the whole of the mortgage-debt, but that a proportionate part of that debt must be satisfied.

*Held*, (1) that the plaintiff's suit was not barred by his previous suit on the second mortgage under the provisions of ss. 13 and 43 of the Civil Procedure Code (Act XIV of 1892).

[46] *Held*, (2) that the plaintiff could not recover the first mortgage-debt from the remaining lands without deducting a proportionate part of that debt.

A mortgagee will not be allowed without special reason deliberately to execute his decree exclusively against one of the owners of the equity of redemption for the whole debt.

*Ram Dhun Dhur v. Mohesh Chunder Chowdhry* (1) approved.

[F., 36 M. 151=13 Ind. Cas. 458=22 M.L.J. 231=11 M.L.T. 63=(1912) M.W.N. 59; R., 21 B. 544 (547); 23 M. 377 (384).]