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13 B. 51.

this case who deposed to a partition having taken place, but whose statement as to the land in dispute having come to the plaintiff's father's share is not believed by the Subordinate Judge. He observes, however, that both in redeeming and re-mortgaging the plaintiff's father acted ostensibly as if he were the sole owner. It is not alleged that the plaintiff and his uncle and cousins are still joint. The mortgage does not purport to have [54] been made by plaintiff's father as manager of the family; nor does it appear that the plaintiff's uncle and cousins claim any interest in the equity of redemption. In the absence, therefore, of all evidence to that effect it could not well be presumed that the plaintiff's father effected the mortgage of 1854-55 otherwise than in his individual capacity. If the defendant had made out that the plaintiff's father and uncles were undivided at that time, it might have been presumed that the mortgage was for and on behalf of them as well as himself, but this he has failed in doing. We do not think, therefore, we should be justified in holding, from the mere fact of the relationship, that the plaintiff's uncle and cousins have any interest in the equity of redemption.

We accordingly reverse the Assistant Judge's decree, and restore that of the Subordinate Judge, the two Judges not differing as to the merits, with this modification that the three months allowed for redemption should count from the date of this decree. The costs of the suit and both appeals to be paid by defendant No. 2, the other defendants not having contested the plaintiff's claim.

Decree reversed.

13 B. 54.

APPELLATE CIVIL.

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

NARU KOLI (*Plaintiff*) v. CHIMA BHOSLE (*Defendant*).^{*}
[30th April, 1888.]

Civil Procedure Code (Act XIV of 1882), s. 257 A—Agreement extending time of payment under decree without sanction of Court—Application for such sanction after the decree was barred.

The decree in a redemption suit directed that the lands mortgaged should be allowed to be redeemed on payment of Rs. 30-7-0 by the plaintiff to the defendant. The decree was subsequently modified by substituting Rs. 91-2-6 for Rs. 30-7-0. On the 3rd October, 1885, the parties entered into an agreement whereby (*inter alia*) the time to pay the decreed debt was extended to five years from that date, but no sanction of the Court was obtained. On the 18th February, 1888, the parties applied to the Court to sanction the agreement of 1885. On reference to the High Court.

[55] *Held*, that the agreement in question required the Court's sanction under s. 257 A of the Civil Procedure Code (Act XIV of 1882), for want of which it was void so far as it related to the judgment-debt, and that the sanction could not be given at the date it was applied for.

[R., 7 Bom.L.R. 995 (997).]

THIS was a reference by Rav Saheb Bhau Yeshvant Gupte, Subordinate Judge of Vita, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

^{*} Civil Reference, No. 8 of 1888.

OPINION.

PER CURIAM:—The facts, so far as they are necessary for the purposes of this reference, are these:—In original suit No. 308 of 1881 a decree was made for the redemption of certain lands on payment by the plaintiff to the defendant of Rs. 30-7-0 and costs within seven months. The date of this decree is not stated in the reference. It was subsequently, on appeal, modified by the Special Judge, substituting Rs. 91-2-6 for Rs. 30-7-0. There was also another modification made which it is unnecessary to notice. This was done on the 23rd September, 1882. Thereafter on the 3rd October, 1885, the parties entered into an agreement, whereby (*inter alia*) the time to pay the above debt was extended to five years from the date of it. This agreement was not made with the sanction either of the Court which had passed the original decree or of the Special Judge. On the 18th February, 1888, after execution of the decree had become barred under the law of limitation, the parties applied to the former Court (Subordinate Judge) to sanction the above agreement of 1885.

The Subordinate Judge asks us whether that agreement requires the sanction contemplated in s. 257 A of the Civil Procedure Code. We are of opinion that it does, and that it is void, for want of such sanction so far as it relates to the judgment-debt, and that the sanction applied for cannot now be given—*Yashwantrao v. Keval Khupchand*(1).

We wish to add that we do not think a Subordinate Judge is justified under s. 617 of the Civil Procedure Code in referring to the High Court a point on which a Division Bench has already once expressed its opinion. That opinion is sufficient authority for him to act upon, whatever his own opinion may be.

13 B. 56.

[56] ORIGINAL CIVIL.

Before Mr. Justice Jardine.

ASSUR PURSHOTAM (*Plaintiff*) v. RATANBAI (*Defendant*).*
[25th August, 1888.]

Adoption—Injunction to restrain adoption—Interim injunction—Practice.

A., a Hindu, died childless possessed of moveable and immoveable property. After his death, disputes arose between his widow (the defendant) and his father and brother. These disputes were settled by an agreement, one of the terms of which was that the widow, (the defendant,) should not adopt a son, and that certain property which she was to have during her life should after her death go to her brother-in-law, Purshotam. In 1873 Purshotam died, leaving his son the plaintiff him surviving. On the 25th August, 1888, the plaintiff filed this suit, alleging that the defendant in violation of the agreement was about to adopt a son, and praying for an injunction. On presenting the plaint he applied for an *interim* injunction, alleging that the defendant intended to adopt a son the next day (Sunday, 26th August).

The Court refused the *interim* injunction.

[R., 4 Bom. L. R. 893 (906).]

MOTION on behalf of the plaintiff for an *interim* injunction restraining the defendant from adopting a son.

* Suit No. 343 of 1888.

(1) Printed Judgments for 1887, p. 323.