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of 15 and 16 Vic., c. 12, and I may remark that he has nowhere notified in his book that he has reserved the right of translation. I order that the suit be dismissed, with costs up to and including the hearing of yesterday. Each party is to bear his own costs of the hearing to-day.

Suit dismissed.

Attorneys for the plaintiffs:—Messrs. *Thakurdas, Dharamsi and Cama.*

Attorney for the defendant:—Mr. *Mirza Husen Khan.*

14 B. 590.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

MALUKCHAND BIN GYANMAL (*Original Defendant*), Appellant v.
SHAN MOGHAN VARDRAJ (*Original Plaintiff*), Respondent.*

[24th March, 1890.]

Power of attorney—Construction of—Power to dispose of property does not give authority to pledge.

A power of attorney authorized the holder "to dispose" of certain property in any way he thought fit.

[591] *Held*, that the word "dispose" was not used in any technical sense, and that the holder of such power had no authority to mortgage the property.

A power of attorney must be construed strictly.

[R., 6 C.L.J. 490 (516).]

APPEAL from the decision of Thomas Moore, First Class Subordinate Judge of Sholapur, in suit No. 644 of 1884.

The property in dispute belonged originally to one Ramaswami.

On the 9th August, 1864, Ramaswami executed a power of attorney in favour of Shivshankar R. Mudliar in the following terms:—"I do hereby authorize Mr. Shivshankar Ramaswami Mudliar to dispose of my bungalows situate in the camp at Sholapur in the way he thinks proper."

On the 12th October, 1864, Shivshankar mortgaged certain property, including the property in dispute, to the Land Mortgage Bank of India for Rs. 50,000. In effecting this mortgage Shivshankar professed to act, and the Bank dealt with him, as owner of the property, and not as agent of Ramaswami.

In 1870 the property in dispute was sold in execution of a decree obtained by one Rampertap against Ramaswami, and purchased by one Anaji, who obtained possession through the Court.

In 1871 Anaji sold the property to defendant No. 3, and put him in possession.

In 1872 the Land Mortgage Bank, in exercise of the power of sale contained in the mortgage-bond of 1864, sold by public auction their interest in the mortgaged property to the plaintiff.

* Appeal No. 65 of 1888.

In 1884 the plaintiff filed the present suit, as assignee of the Bank, to enforce his mortgage lien against the property in dispute and also to obtain possession with mesne profits from the date of his purchase up to delivery of possession.

The defence to this suit was that Shivshankar had no authority to mortgage the property, and that, therefore, the mortgage was null and void as against defendant No. 3, the auction-purchaser of the right, title, and interest of Ramaswami.

The Subordinate Judge held that Shivshankar had under his power of attorney the authority to mortgage the property, and that the mortgage was binding on defendant No. 3. He, [592] therefore, passed a decree, awarding possession of the property in suit to the plaintiff. He rejected the rest of his claim.

Against this decree the defendant No. 3 appealed to the High Court.

Latham, Advocate-General (with him *Govardhan M. Tripati*), for appellant:— I contend that Shivshankar's power of attorney gave him no authority to mortgage the property. The word dispose does not imply an authority to pledge—*Watson v. Jonmenjoy Coondoo* (1). The ruling of the Calcutta High Court in this case is affirmed by the Privy Council: see *Jonmenjoy Coondoo v. Watson* (2). Powers of attorney should be strictly construed—*Dart on Vendors and Purchasers*, Vol I, p. 88, Vol. 2, p. 42; *Sugden on Vendors and Purchasers*, p. 45; and *Story on Agency*, para. 68. Even assuming that the power of attorney did authorize a mortgage, still the evidence shows that Shivshankar did not purport to act under the power. He dealt with the property as owner; and the Bank, too, treated him as such. The mortgage was, therefore, clearly *ultra vires*, and the mortgagee acquires no interest whatsoever in the property.

Jardine, for respondent:—The power of attorney confers unlimited authority on the agent. The words are "dispose of my bungalows in any way he thinks fit." These words clearly give the authority to mortgage as well as sell. The word "dispose" should be construed with reference to the context—*Chunder Kant Roy v. Krishna Sunder Roy* (3). A mortgage is a conveyance with the right to redeem. It is, therefore, a "disposal" of property.

JUDGMENT.

JARDINE, J.—By Ex. 41, dated the 12th October 1864, one Shivshankar mortgaged to the Land Mortgage Bank certain properties, including those now in suit. The plaintiff derives his title from the Bank, and sues to recover the property in suit from the defendant 3, who has been in possession for many years under a title derived through one Rampertap from the owner Ramaswami.

It appears from the mortgage, Ex. 41, and another document, Ex. 41 A, that Shivshankar purported to deal with the [593] property in suit as his own. It is not denied that the owner of the property was Ramaswami.

But it has been argued for the plaintiff-respondent that the Subordinate Judge was right in upholding the act of Shivshankar, on the ground that he had authority to mortgage the property under the power of

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(1) 8 C. 934.

(2) 10 C. 901.

(3) 10 C. 710.

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attorney executed to him by Ramaswami. The words are "I do hereby authorize Mr. Shivshankar Ramaswami Mudliar to dispose of my bungalows situated in the camp at Sholapur in the way he thinks proper."

The word "dispose" is not used in any technical sense; and in the absence of authority, it seems to us that it would be wrong to assume from the language that Ramaswami intended to confer a power to pledge which is not necessarily included in a power to sell—*The Bank of Bengal v. Fagan* (1). A power of attorney should be construed strictly—*Story on Agency*, s. 68.

It is argued, however, that the witnesses prove that Ex. 8, a draft of the letter, Ex. 232, dated 1st March, 1869, is in the hand-writing of Ramaswami. The Court is asked to infer from the contents that Ramaswami must have known of the mortgage by Shivshankar, and that his successor in title is now estopped from questioning that transaction. In the absence of any information about the circumstances in which Ex. 8 was written, and in face of the fact that Ex. 232 is a letter from Shivshankar, it would be unsafe to draw so great an inference and decide this suit thereupon. Nor, in face of the ruling that powers of attorney must be construed strictly, can any especial weight be given to the fact that Ramaswami and Shivshankar did a joint business, and found it convenient to live together.

There is no evidence that Shivshankar purported to act under the power of attorney in mortgaging to the Bank. There is no evidence that the Bank was aware of this power of attorney. It is clear that Shivshankar acted and that the Bank dealt with him in this matter as if he were the real owner of the property, as he was of the other properties mortgaged by the same instrument. There is no evidence that any of the money raised by the mortgage ever reached Ramaswami. Exhibit 260, dated the 21st [594] October 1870, is the notice given by the Bank of the intended sale under the mortgage. It is directed only to the representatives of Shivshankar.

For these reasons, we are of opinion that the plaintiff must fail; and we, therefore, reverse the decree of the Subordinate Judge and dismiss the suit; the plaintiff to pay the costs of defendant 3 in all Courts.

Decree reversed.

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APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

MUNLA AMAD (*Original Petitioner*), *Appellant v. KRISHNAJI GANESH GODBOLE* (*Original Opponent*), *Respondent*.* [31st March, 1890.]

Limitation Act (XV of 1877), s. 5—Appeal—Appeal filed beyond time—Order for admission of such appeal not binding on respondent—Bombay Civil Court Act (XIV of 1869) s. 27—Power "to hear" appeals includes power to hear any question of limitation relating thereto—Practice.

Where a District Judge admits *ex parte* an appeal filed beyond time, and the appeal is referred for disposal to a Subordinate Judge with appellate powers, the

* Second Appeal, No. 492 of 1881.

(1) 5 M. I. A., 27 (41).