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in respect of them. This provision is arbitrary, and there is no *a priori* inference that the framers of the present articles intended to introduce it into them, nor is there any reason for departing from the plain, grammatical meaning of art. 72 in order to effect his object. In plain words, the article provides that a shareholder must be registered for three months before he can vote. That is a condition precedent to his exercise of that right. "Registered" applied to a member of a company is a technical expression, and means entered upon the register in pursuance of s. 47 of the Act. The shareholders having acquired the right to vote by being entered for three months on the register, the article proceeds to define the extent of his voting power. He is to have one vote in respect of every share held by him. The plaintiffs contend that such share must have been held by him for three months; but why? To express that meaning, words must be introduced into the article such as held by him "for three months." This would involve a departure from the plain meaning of the words [172] actually employed, but that is only allowable when it is sought to avoid an illegality, inconsistency, or manifest absurdity. No such reason exists here. I must, therefore, decide that the votes in respect of the 100 and the 5 shares were properly allowed. The suit will be dismissed with costs, including costs of the rule.

Attorneys for the plaintiffs: Messrs. *Conroy and Brown*.

Attorneys for the defendant: Messrs. *Payne, Gilbert and Sayani*.

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FULL BENCH.

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

PARSHOTAM BHAISHANKAR (*Original Plaintiff*), Appellant v.
 HIRA PARAG (*Original Defendant*), Respondent.*
 [1st May, 1890.]

Bhagdari (Bom.) Act V of 1862, s. 3—Undivided share of a bhag, alienation of—Construction.

The alienation of an undivided portion of a *bhag*, or share in the *bhag*, to a person who is not a *bhagdar*, is void under s. 3 of Act V (Bom.) of 1862.

BIRDWOOD, J., dissented.

THE plaintiff obtained a decree against one Lakhmidas, and in execution he attached a certain *bhagdari* property as belonging to Lakhmidas. The present defendant objected to the attachment, alleging that the property was his, he having purchased it at a previous execution sale. He pleaded adverse possession. The attachment was removed, and the plaintiff was referred to a suit to establish his right. He now sued to establish his right to attach and sell the said property in execution.

The Court of first instance found the previous purchase of the defendant proved, as also the plea of adverse possession, and rejected the plaintiff's suit.

The plaintiff appealed to the District Judge, who confirmed the lower Court's decree.

* Appeal No. 378 of 1888.

On appeal by the plaintiff to the High Court, among other grounds, the plaintiff contended that the property being an [173] undivided portion of a *bhag*, the sale of it to the defendant was void under the Bhagdari (Bombay) Act V of 1862.

The following reference was made by the Division Bench, consisting of the Chief Justice and Mr. Justice Telang, to a Full Bench:—

“Having regard to the decision in *Ardesir Nasarvanji v. Muse Natha Amiji* (1), *Bai Kuvarbai v. Bhagvan Ichharam* (2) and in second appeals Nos. 519 of 1882 and 474 and 475 of 1885, we think it expedient to refer the following question for the decision of a Full Bench:—

“Whether the alienation of an undivided share in a *bhag* is void under s. 3 of Bombay Act V of 1862.”

Gokuldas Kahandas, for the appellant.—Having regard to the preamble and ss. 1 and 3 of the Bhagdari (Bombay) Act V of 1862, it is clear that the alienation of an undivided share of a *bhag* is void. The circumstance that it remains undivided for a time does not prevent it from dismemberment by partition. The intention of the Legislature is to prevent dismemberment of the *bhag*, and it would frustrate that intention if a sale of an undivided share be held legal—*Ardesir Nasarvanji v. Muse Natha Amiji* (1). The case of *Bai Kuvarbai v. Bhagvan Ichharam* (2), which is against me, seems to have left the second part of the preamble of Bombay Act V of 1862 unconsidered. The object of the Act is to prevent mischief by alienation and to preserve the *bhagdari* estate—second appeals Nos. 474 and 475 of 1885, in which such alienations were held void.

Goverdhanram Madhavram, for the respondent, relied on *Bai Kuvarbai v. Bhagvan Ichharam* (2). To amount to dismemberment there must be a physical dismemberment. Mere declaration of a right to a portion of the *bhag* is no such dismemberment.

JUDGMENT.

SARGENT, C.J.—The question whether the alienation of an undivided share in a *bhag* to a person outside the *bhag* is void under s. 3 of the Bhagdari (Bombay) Act V of 1862 is referred [174] to by Melvill and Kembal, JJ., in the judgment on *Ardesir Nasarvanji v. Muse Natha Amiji* (1), but without deciding it. They say: “We do not feel bound to determine the question whether the attachment and sale of an undivided share in a *bhag* would be contrary to the letter or spirit of Bombay Act V of 1862. Even if Ardesir were the purchaser of an undivided share, all that he could do would be to sue for a partition, which admittedly he has never done, and which he is not now doing; and the question would then arise, whether consistently with the provisions of Bombay Act V of 1862, such a partition could be made.” In second appeal No. 519 of 1882 the purchaser of an undivided share ought to enforce a division of the *bhag*, and the Assistant Judge held that the purchase was not illegal, because the *bhag* still remained entire, but that the result of the partition, which the plaintiff was attempting to enforce, was rendered illegal by the Act. On second appeal the decree of the Court below was confirmed by West and Nanabhai Haridas, JJ., but there was no written judgment to show the precise ground on which the Court proceeded. In

(1) 1 B. 601 (603).

(2) 13 B. 203.

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second appeals Nos. 474 and 475 of 1885, in which there was no written judgment, the Court would appear by confirming the decree of the Court below to have proceeded on the assumption that the sale of an undivided portion of a *bhag* was void. However, in *Bai Kuvarbai v. Bhagvan Ichharam* (1). Birdwood and Parsons, JJ., held that such a sale was not void on the ground that the mischief at which the Act aims is the physical dismemberment of *bhags*. They say: "No doubt, the language of the section seems comprehensive enough to include such shares of *bhags* within the prescribed prohibition; for the section provides that no "portion" of a *bhag* shall be liable to sale by the process of any Civil Court; and an undivided share is as strictly a portion of a *bhag* as a share actually divided off by metes and bounds; but any interference with the sale of undivided shares does not appear to be within the intended scope of the Act. The mischief at which the Act aims is the dismemberment of *bhags*,—that is, their physical dismemberment." The preamble to the Act shows that the motive of passing the Act was to secure the permanence of *bhagdari* and *narvadari* [175] tenures, of which the leading feature, as stated by Westropp, C. J., in *Dolsang v. The Collector of Kaira* (2) after referring to the reports of the revenue authorities on the subject, is that the shareholders in the village lands settle hereditarily and in the gross for the payment of the assessment on the lands to Government—and s. 5 declares that it is the dismemberment of the *bhag* or share or recognized subdivision that the Act is intended to prohibit. The question is, therefore, whether the alienation of an undivided portion of a *bhag* or share in the *bhag* to a person, who is not a *bhagdar*, is not a dismemberment of it, which will cause a discontinuance of the tenure. Now, although this may not perhaps result at once from the alienation of an undivided portion of a *bhag* or share, such alienation places the alienee in a position in which he can assert his right to partition (unless prevented from doing so by some provision of the Act) and so become the owner of a portion physically dismembered from the *bhag*. There is no section in the Act, which, without straining its language, could be construed to have the effect of prohibiting such an alienee from suing for partition; and the lands allotted to him on such partition would not be subject to the *bhagdari* tenure, which is not a quality of the lands—or else there would have been no necessity for the Act. The possibility that the alienee might associate himself with the hereditary sharers in the *bhag* ought not, we think, to weigh against the mischief with which the tenure is threatened by such an alienation, and which the Act was intended to prevent. As such an alienation certainly comes within the language of the section and practically falls within the mischief of the Act, we think the prohibition against alienation should be held to apply equally well to an undivided "portion" as to one divided by metes and bounds. We must, therefore answer the question referred to us in the affirmative.

BIRDWOOD, J.—I adhere to the decision arrived at by Mr. Justice Parsons and myself in *Bai Kuvarbai v. Bhagvan* (1). The mischief at which the Act aims is the physical dismemberment of *bhags*. Though the expression "any portion of a *bhag*" is [176] used in s. 3, yet the context, as pointed out in our judgments in *Bai Kuvarbai's* case, shows that it was not apparently the intention of the Legislature to prohibit the sale of an undivided share in a *bhag*. If the purchaser of such a share were to

(1) 13 B. 203 (208).

(2) 4 B. 367 (374).

obtain a decree for partition, I doubt whether any plot of land divided off by metes and bounds, but not constituting a recognized sub-division of a *bhag*, could be assigned to him; for such an assignment would be within the mischief of the Act. But every sale of an undivided share does not necessarily result in an attempt on the part of the vendee to secure possession of a specific portion of the *bhag* lands. In many cases the purchasers of undivided shares must have been admitted to joint possession with the other shares, as in *Bai Kuvarbai's* case. They may be quite satisfied with such possession; and so long as they are, the integrity of the *bhag* will not be threatened any more than it ordinarily is by the possibility of any one of the original sharers seeking at any time to sue out a partition. The purchaser has no better right to ask for a partition than was possessed by the sharer whose share or part of whose share he purchased. The sale does not, therefore, introduce any new element of danger into the administration of the village. Nor, again, do I think that the Act contemplates the future retention of *bhags* in the hands only of persons settling hereditarily for the payment of the assessment, for there is nothing in the Act to prevent the sale of a whole *bhag* or a recognized sub-division of a *bhag*,—which I take to be a parcel of land divided off by metes and bounds,—to persons who are in no way connected with the families of the original *bhagdars*. For these reasons, I am unable to concur in the judgment of the learned Chief Justice and Mr. Justice Telang.

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[177] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Candy.

NEMAVA AND ANOTHER (*Original Defendants*), *Applicants v.*
DEVANDRAPPA (*Original Plaintiff*), *Opponent*.*
[30th June, 1890.]

Mamlatdars' Act (Bombay Act III of 1876), s. 4, cl. 2—Injunction—Possession—Constructive possession—Right to sue—Constituted attorney.

A landlord who has only a constructive possession of lands through his tenant, cannot obtain relief by way of injunction under cl. 2 of s. 4 of the *Mamlatdars*, (*Bombay Act (III of 1876)*).

Desai Malabhai Bapubhai v. Keshavbhai Kuberbhai (1) followed.

D. sued in the *Mamlatdar's* Court, as A.'s constituted attorney, for an injunction restraining defendants from causing any obstruction to his possession of certain lands. The land belonged to A.'s husband, who was alleged to be a lunatic. But there was no adjudication of his lunacy, nor was A. appointed a manager of his estate under Act XXXV of 1858.

Held, that D. had no right to sue. A. not having been appointed a manager of her husband's estate, had herself no right to sue in respect of a disturbance of her husband's possession. She could not, therefore, authorize her agent to sue on her behalf.

[R., 16 B. 239.]

THIS was an application under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

* Application No. 1 of 1890 under extraordinary jurisdiction.

(1) 12 B. 419.