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Westropp, C.J., seems to demand that the privileged communication must be confidential or private. Now, the fact that a particular person bears a particular name is not a confidential matter, except in very peculiar circumstances. It is a fact which is known to all that person's acquaintances, and is not usually a secret. If it could be argued that the fact that a particular person had made a statement was privileged, his name doubtless would be equally privileged; but the language of s. 126 does not apply to such a fact which cannot be called a communication, and no authority has been shown us to support the opinion that such a fact is privileged. Consequently, unless the name were made the subject of special confidence, and it were stipulated by or on behalf of the client that it was not to be disclosed, there seems nothing in s. 126, as interpreted in the Bombay case above noted, to protect the name from disclosure. Under these circumstances, I think our answer to the [283] third question should be that, unless Mr. Craigie swears that the name was told him confidentially as a secret by or on behalf of his client, he must state what name was told him, provided such statement is otherwise relevant.

The fourth question hardly arises now that the first question has been answered; but if for any reason the name of the client is not disclosed, no privilege can be claimed under s. 126, and all relevant and admissible questions put to Mr. Craigie in the course of his examination as a witness must be answered.

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APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

TRIBHOVANDAS JEKISANDAS (Original Plaintiff), Appellant v.
KRISHNARAM KUBERRAM AND OTHERS (Original Defendants),
Respondents.* [6th April, 1893.]

Bhag—Bhagdari Act (Bombay) V of 1862, s. 3—Mortgage—Alienation of a portion of bhag—Deed—Property comprised in deed—Construction—General words—Particulars of property stated in deed—Leading description—Falsa demonstratio—Vendor and purchaser.

A mortgage-deed of certain *bhagdari* lands stated that "all the properties appertaining to the entire *bhag*" were thereby mortgaged to the plaintiff. The *bhag* comprised (*inter alia*) four *gabhans* (building-sites). But the clause which set forth the particulars of the property mortgaged thereby, specified only two *gabhans*, one only of which belonged to the *bhag* and the other did not. The deed then proceeded:—"According to these particulars, lands, houses and *gabhans*, barnyards, wells, tanks, *padars* and pasture lands also, together with whatsoever may appertain to the *bhag*—all the properties appertaining to the whole *bhag* have been mortgaged and delivered into your possession

There is no other property appertaining to the said *bhag* of which mention is not made here."

Held, that the particulars were "the leading description," and the supplementary description of them as constituting the entire *bhag* should be regarded as "*falsa demonstratio*."

Held, also, that the mortgage, so far as it included property belonging to the *bhag*, was void under the 3rd section of the Bhagdari Act (Bombay) Act V of 1862 (1), but was valid as to property not comprised in the *bhag*.

[Rel. on, 17 O.C. 256; 24 Ind. Cas. 465.]

* Second Appeal, No. 627 of 1890.

(1) Section 3 of the Bhagdari Act (Bombay Act) V of 1862:—

It shall not be lawful to alienate, assign, mortgage or otherwise charge or encumber any portion of any *bhag* or share in any *bhagdari* or *narwadari* village [284] other than a

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[284] SECOND appeal from the decision of G. Jacob, Assistant Judge, F. P., of Surat, at Broach.

Suit to recover money due on a mortgage.

The plaintiff sued to recover Rs. 1,699 alleged to be due on a mortgage. He alleged that by a mortgage-deed dated the 1st May, 1880, defendants Nos. 1 and 2 mortgaged to him their entire *bhag*, together with other land situate at the village of Vadadla, a *bhagdari* village in the Broach Taluka. The mortgage-deed contained the following clauses:—

“On account hereof (*i.e.*) as *aivej* (security) we have mortgaged to you all the undermentioned properties in our possession and enjoyment appertaining to the whole *bhag* namely, the Sarkari *bhag* land situate within the *sim* of mauje Vadadla * * which stands in the *khata* of ourselves and our deceased brother Keshav Makan, and the houses and *gabhans* (building-sites) appertaining to the said *bhag*, and we have delivered the same into your possession. Particulars are as follows:—

“The Sarkari *bhag* land situate within the *sim* of the village of mauje Vadadla.

2—33. No. 31, acres two and gunthas thirty three.

0— 3. No. 157, acre zero and gunthas three.

33—35.

[285] “The houses and the *gabhans* (building-sites) appertaining to the said *bhag* in the village of mauje Vadadla are as follows:—

1, house one including the ground	*	*
1, house one including the ground	*	*
1, one plot of open <i>gabhan</i>	*	*
1, one plot of open <i>gabhan</i>	*	*

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“According to these particulars, land acres 33 and 35 gunthas * * houses and *gabhans* * * together with whatever may appertain to the said *bhag*, all the properties appertaining to the whole *bhag* have been mortgaged and delivered into your possession * * *. There is no other property appertaining to the said *bhag* of which mention is not made here.”

The defendants resisted the claim on the ground (*inter alia*) that the plaintiff's mortgage-deed was invalid under the Bhagdari Act (Bombay

recognized sub-division of such *bhag* or share, or to alienate, assign, mortgage or otherwise charge or incur any homestead, building-site (*gabhan*) or premises appurtenant or appendant to any such *bhag* or share or recognized sub-division, appurtenant or appendant thereto, apart of separately from any such *bhag* or share, or recognized sub-division thereof.

Any alienation, assignment, mortgage, charge or incumbrance, contrary to the provisions of this section, shall be null and void; and it shall be lawful for the Collector or other chief revenue-officer of the district, whenever he shall, upon due inquiry, find that any person or persons is or are in possession of any portion of any *bhag* or share of any homestead, building-site (*gabhan*) or premises appurtenant or appendant to such *bhag* or share in any *bhagdari* or *narwadari* village other than a recognized sub-division of such *bhag* or share in violation of any of the provisions of this section, summarily to remove him or them from such possession, and to restore the possession to the person, or persons whom the Collector shall deem to be entitled thereto;

And any suit brought to try the validity of any order or orders which the Collector may make in such matter, must be brought within three calendar months after the execution of such order or orders.

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Act) V of 1862, as it related only to a portion of the *bhag* and not to the whole of it.

The Subordinate Judge allowed the plaintiff's claim, holding that though three out of the four *gabhans* (building-sites) belonging to the *bhag* were not expressly mentioned in the detailed description given in the mortgage-deed, still as the deed purported to mortgage the entire *bhag*, and not only a portion of it, any omission in the particulars was a *falsa demonstratio*, and that the deed was, therefore, not opposed to the provisions of the Bhagdari Act.

On appeal by defendant No. 3, who alleged himself to be *bona fide* purchaser of the property from defendants Nos. 1 and 2, the Judge reversed the decree and rejected the claim on the following grounds:—

"I am of opinion that upon the second issue, (*viz.*, whether the plaintiff's mortgage was void under the Bhagdari Act, Bombay Act V of 1862) the plaintiff's deed must fail. The Subordinate Judge has found; and his finding is not disputed, that three *gabhans* of the *bhag* are not included in the detailed description in the mortgage-deed; but holding that the intention of the parties was that the whole *bhag* should pass, he considered that this was only matter of *falsa demonstratio*, and not an omission which could affect the validity of the mortgage. The respondents' pleader relies principally on the expression in the mortgage-deed coming at the close of the description of the property and [286] including whatever may be appended to this *bhag*, the whole *bhag*. The first part of this expression, in the connection in which it occurs, must, I think, be taken as applying to appended rights and interests such as those of trees, water, &c.; and, having regard to the fulness of the detail given, I cannot think that the description of the lands and *gabhans* was intended to be other than complete. The *bhag*, as mortgaged, was that consisting of the property described in the deed, and that is found not to be the whole *bhag*, and the fact that in the mortgage-deed it is called the whole *bhag* is immaterial. If a mere recital of this sort were admitted as sufficient to prove the intention of the parties to alienate a whole *bhag*, the provisions of Act V of 1862 (Bombay) would soon become a dead letter.

"If the deed had merely purported to mortgage the whole *bhag* without any description of the property in detail, the plaintiff might have been secure; but, taking the deed as it is, I cannot hold the omission to be merely matter of *falsa demonstratio*."

The plaintiff preferred a second appeal and respondent No. 2 (defendant No. 3) Bapubhai Shivilal, who claimed to be a purchaser of one of the *gabhans* (building-sites) in dispute, filed cross-objections under s. 561 of the Civil Procedure Code (Act XIV of 1882).

Inverarity with *Vasudeo G. Bhandarkar*, for the appellant (plaintiff):—The main question in this case turns upon the construction of the mortgage-deed. The Judge held the deed to be invalid under the Bhagdari Act, because a part (*viz.*, three *gabhans*) of the *bhag* has not been included in the details of the property given in the deed. But we contend that though the two *gabhans* have not been specifically mentioned, still as the deed states that the entire *bhag* is mortgaged, the two *gabhans* must be regarded as included, and their omission in the details is merely *falsa demonstratio*. We rely on *Travers v. Blundell* (1) and *West v. Lawday* (2). The intention

(1) 6 Ch. Div. 436.

(2) 11 H.L.C. 384.

of the parties was that the deed should comprise the entire *bhag*. Otherwise the plaintiff would not have entered into the transaction at all.

[287] But even if it be held that the whole *bhag* is not mortgaged under the deed, and that the transaction is, therefore, invalid as to the *bhag*, that will not affect the mortgage of the property which is not a part of the *bhag*. Survey No. 157 and one of the *gabhans* in dispute do not belong to the *bhag*. The transaction with respect to these at least must stand. Further, we contend that we should be given a money decree in this suit, because our personal remedy would now be barred if we were to bring a separate suit for it. The limitation to a suit for the recovery of money under a registered bond is six years.

P. M. Mehta (with *Gokuldas K. Parekh*), for the respondents (defendants Nos. 3, 4 and 5):—The Judge finds that the transaction is not a mortgage of the whole *bhag*, but only of a portion of it, and that it thus practically effects the dismemberment of the *bhag* and thus violates the Act. The omission of the *gabhans* (building-sites) in the description of the property was intentional, and not caused by mistake, as shown by the other documents and the circumstances of the case. The Judge was right in holding that the general words in the deed must be read with the particulars of the property given therein. The details must control the general words—*Griffiths v. Parsons* (1). The Bhagdari Act prohibits partial alienation of a *bhag*.

JUDGMENT.

SARGENT, C. J.—The important question in this case is, whether the plaintiff's mortgage of 1st May, 1880, was, as found by the lower appellate Court, void under s. 3 of the Bombay Act V of 1862, which forbids the alienation of any portion of any *bhag* other than a recognised division of such *bhag* or of any homestead, building-site (*gabhan*) apart or separately from such *bhag* or recognised sub-division. It was found by the Subordinate Judge, and his finding was not disputed before the lower Court of appeal, that there were four *gabhans* appertaining to the *bhag*, of which only one is expressly referred to in the particulars of the property mortgaged.

But it has been contended that upon the proper construction of the mortgage-deed, it was a mortgage of the entire *bhag*, and that the particular description of the *gabhans* was what is termed [288] "*falsa demonstratio*." In the case of *West v. Lawday* (2) Lord Westbury explains the maxim "*falsa demonstratio non nocet*," relied on by the appellant, in the following terms:—"Where some subject-matter is devised as a whole under a denomination which is applicable to the entire land, and then that description is followed by words which are added on the principle of enumeration, but which do not exhaust all the particulars, then the entirety, which has been expressly and definitely given, shall not be prejudiced by an imperfect and inaccurate enumeration of the particulars." In the case of *Travers v. Blundell* (3) the testator was exercising a power given him by his father's will over an estate called the Rigby Estate which his father had purchased, and Sir G. Jessell after saying that the real question in cases of this description was "which is the leading description" held that the words in the will "that part of Rigby's Estate purchased by my father" was the leading description, although the enumeration of the

(1) 1 New Reports, 330.

(2) 11 H.L.C. 384.

(3) 6 Ch. Div. 436.

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closes, of which the will said the estate consisted, made no mention of two of the closes.

In the present case, the mortgagors say they have mortgaged to the plaintiff "all the undermentioned properties in their possession and enjoyment appertaining to the entire *bhag* standing on Government records in their *khata*, and the houses and *gabhans* appertaining to this share. Particulars are as follows." These particulars enumerate the lands and houses, and conclude by mentioning 2 *gabhans* of which one only is a *gabhan* appertaining to the *bhag*, and the other being a *gabhan* which has been found to belong no longer to the *bhag*. The deed then proceeds as follows:—"According to these particulars, lands, houses and *gabhans*, barnyards, wells, tanks, *padars* and pasture lands also, together with whatsoever may appertain to the said *bhag*,—all the properties appertaining to the whole *bhag* have been mortgaged and delivered into your possession," and the deed concludes with the statement "There is no other property appertaining to the said *bhag* of which mention is not made here."

The document, therefore, down to the end of the particulars is, in terms, a mortgage of certain properties therein expressly [289] enumerated, supplemented by the description that they appertain to the entire *bhag*. The passage which follows—"According to these particulars all the properties belonging to the *bhag* have been mortgaged to you"—does not enlarge or alter what had already been said; it is only a repetition of it in another form. The particulars are, therefore, in the words of the Master of the Rolls, "the leading description," and the supplementary description of them as constituting the entire *bhag* together with the houses or *gabhans* appertaining to it, which is admittedly incorrect, must be regarded as "*falsa demonstratio*." The statement by the mortgagor, at the close of the document, that the particulars of property constituted the entire *bhag*, only emphasises what is implied by the general description, and cannot affect the clear conclusion to be drawn from the language of the operative part itself of the instrument, or prevent the operation of the Act in invalidating the instrument if, as a fact, all the *gabhans* were not included. The Assistant Judge was, therefore, in our opinion, right in holding that the plaintiff's mortgage, so far as it included property belonging to the *bhag*, was void under the Bhagdari Act.

It has, however, been found by both the Courts that Survey No. 157 is not included in the *bhag*, and, therefore, as to that piece of land and the second *gabhan* mentioned in the particulars, which, it is admitted, does not belong to the *bhag*, the mortgage can have effect given to it. The plaintiff is also entitled to a money decree against the defendants Nos. 1 and 2 for the sum of Rs. 1,699 as found due by the Subordinate Judge, and against which no appeal was brought by those defendants.

We must, therefore, vary the decree by directing that defendants Nos. 1 and 2 do pay the plaintiff the sum of Rs. 1,699, and that in default of so paying, the Survey No. 157 and the second *gabhan* mentioned in the particulars of property in the mortgage be sold, and the proceeds applied in payment of the mortgage-debt. The appellant to pay the costs of this appeal to the defendants other than defendants Nos. 1 and 2.

Decree varied.