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JULY 4.
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APPEL-
LATE
CIVIL.
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18 B. 382.

money endorsed on the conveyance, and the plaintiff must, therefore, be taken to have purchased the mortgagee's interest in the house, which would include the right by way of easement over the defendant's *bol*. We think, therefore, that the plaintiff has established his right to the use of the northern privy and a way to it along the *bol*.

As to the rights of draining the water of his house by the drain running down the *bol*, we think that the words of the mortgage by Chimnaji to Ravji Lakshman, through whom defendant derives his title,—“you are to have the use of the drain for passing water as it has continued from old times”—must be understood as intended to reserve to Chimnaji the right in respect of the house still retained by him of using the drain whilst conferring an equal right on Ravji Lakshman of using it for the enjoyment of the mortgaged house.

We must, therefore, vary the decree of the Court below by granting plaintiff an injunction to restrain defendant from interfering with or obstructing the right of way of himself and other inmates of the house through the *bol* to the northern privy and the use of the same and also his right to have the water from his house conveyed by the drain in the *bol*. The plaintiff to have his costs of this appeal. Parties to pay their own costs in the lower Court of appeal.

Decree varied.

18 B. 387.

APPELLATE CIVIL.

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

SAVLARAM AND OTHERS (*Original Defendants Nos. 2, 3 and 7*),
*Appellants v. GENU AND OTHERS (Original Plaintiffs), Respondents.**
[6th July, 1893.]

Limitation Act (XV of 1877), art. 134, sch. II—Mortgage—Sub-mortgage—Redemption.

In 1864 Ramji mortgaged the property in dispute with possession to Raghu. Raghu and his widow after his death sub-mortgaged various portions of it to Savlaram (defendant No. 3) in 1864, 1866 and 1870. After the death of the mortgagor, Ramji, his grandsons (plaintiffs Nos. 1, 2 and 3) sold their equity of redemption to plaintiffs Nos. 4 and 5 and in 1891 the five plaintiffs sued defendants Nos. 1 and [388] 2, the heirs of Raghu (original mortgagee) and the sub-mortgagee (defendant No. 3) for redemption and possession. The defendants contended that the suit was barred by the Limitation Act (XV of 1877), sch. II, art. 134.

Held, that art. 134 did not apply, as the language of the sub-mortgage-deed showed that the transaction was merely a mortgage of the mortgage-interest of Raghu and not of the entire property in the land.

Eivakhan Daudkhan v. Bhiku Sazba (1) and Yesu Ramji v. Balkrishna (2), referred to.

APPEAL from an order of remand passed by Rao Bahadur Chunilal M., First Class Subordinate Judge of Poona, with appellate powers.

The plaintiffs in 1891 sued to redeem and recover possession of certain lands from the defendants. The lands originally belonged to Ramji, the grandfather of plaintiffs Nos. 1, 2 and 3. In 1864 he mortgaged

* Appeal No. 1 of 1893 from order.

them with possession to Raghu. In 1864, 1866 and 1870 Raghu and after his death his widow sub-mortgaged them to Savlaram (defendant No. 3). After Ramji's death his heirs (plaintiffs Nos. 1, 2 and 3) sold the equity of redemption to plaintiffs Nos. 4 and 5. The five plaintiffs now sued the mortgagees and sub-mortgagees for redemption.

The defendants pleaded limitation, and relied on art. 134 of sch. II of the Limitation Act (XV of 1877) (1).

The Subordinate Judge found that art. 134, sch. II of the Limitation Act (XV of 1877), was applicable to the case, and on the authority of *Yesu Ramji v. Balkrishna* (2) dismissed the suit as time-barred.

On appeal by the plaintiffs the Judge reversed the decree and remanded the case for a fresh decision.

He found it proved that the original mortgagee Raghu and his widow after his death had sub-mortgaged the property to defendant No. 3, and he held that art. 134 of sch. II of the Limitation Act did not apply in a case in which "a person [389] purchases from another with full knowledge that his vendor or mortgagor, as the case may be, is himself a mortgagee."

Defendants Nos. 2, 3 and 7 appealed.

Ghanasham N. Nadkarni, appeared for the appellants (original defendants Nos. 2, 3 and 7). He relied upon *Baivakhan Daudkhan v. Bhiku Sazba* (3) and *Yesu Ramji v. Balkrishna* (2).

Daji Abaji Khare, appeared for the respondents (original plaintiffs).

JUDGMENT.

SARGENT, C.J.—In this case the lower appeal Court has held that art. 134, Limitation Act (XV of 1877), did not apply, on the ground that the defendant had notice that his mortgagor Visaji was only a mortgagee of the land in question. Whether notice, as such, as showing want of good faith would be sufficient to deprive the appellants of the benefit of the above article of the Act of Limitation cannot perhaps regarded as having been distinctly decided by any Division Bench of this Court having regard to the language of the Court in *Baivakhan Daudkhan v. Bhiku Sazba* (3) and *Yesu Ramji v. Balkrishna* (2). But here it is sufficient to say that art. 134 does not apply, as the language of the mortgage-deed, under which the defendants claim in this case, shows that it was only a mortgage of the mortgage-interest of Raghuji Visaji, and not of the entire property in the land. We must, therefore, confirm the decree of the Court below with costs.

Decree confirmed.

(1) Article 134 of sch. II to the Limitation Act (XV of 1877) gives as the period of limitation twelve years from "the date of the purchase" for a suit to recover possession of immovable property conveyed or bequeathed in trust or mortgaged, and afterwards purchased from the trustee or mortgagee, for a valuable consideration.

(2) 15 B. 593.

(3) 9 B. 475.