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*IN RE*  
MUKUND  
BĀBU VETHE.

protecting order with him, his showing it to the chief constable may be easily mistaken for his flourishing it about. Further, there is nothing unnatural in such a man showing this order to the Sháhápúr jamádár, or to the chief constable, and in the jamádár not attending to it, and the chief constable urging that it could not protect Mukund. The only misstatement of fact relates to the question of conveyance. But it is too small a matter to furnish grounds for further prolonging this unhealthy litigation. No jury would convict the persons so charged with wilfully giving false evidence under such circumstances. I concur, therefore, in refusing to interfere with the order of discharge passed by the First Class Magistrate, and in revoking the sanction given by the same Magistrate to prosecute Mukund and his brother and pleader for giving false evidence in a judicial proceeding.

## APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice M. G. Ránade.*

NĀGAR PRA'GJI (ORIGINAL APPLICANT), APPELLANT, v. JIVA'BHAI  
BA'VA'JI (ORIGINAL OPPONENT), RESPONDENT.\*

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January 30.

*Act VI of 1888 (Bombay), Sec. 31—Gujarát Tálukdárs' Act—Sale in execution of a decree upon a mortgage before the Act—Necessity of sanction of the Governor in Council to the sale—Execution of decree—Sale.*

Certain *tálukdári* estate was mortgaged under a *sánkhat* executed before the Gujarát Tálukdárs' Act (Bom. Act VI of 1888) came into force. On the 22nd August, 1889 (*i.e.* subsequent to the Act coming into force), a decree was passed for sale of the mortgaged property. The decree was transferred for execution to the Collector, who refused to put up the property to sale without the previous sanction of Government as required by section 31 of the Tálukdári Act.

*Held*, that section 31 of the Act had no application to the present case. The *sán*-mortgage having been executed before the Act came into force, and left with its validity untouched by clause 1 of section 31, the ordinary remedy of the mortgagee to bring the property to sale was not taken away by that section. The sanction of the Governor in Council was, therefore, not necessary to the sale in execution of the decree on the mortgage.

SECOND appeal from the decision of J. J. Heaton, Acting Joint Judge of Ahmedabad, in appeal No. 210 of 1892.

\* Second Appeal, No. 454 of 1893.

On the 22nd August, 1889, plaintiff obtained a decree for sale of certain *tálukdári* estate which had been hypothecated under a *sánkhat* executed before the Gujarát 'Tálukdárs' Act (VI of 1888) came into force.

The decree was transferred for execution to the Collector of Ahmedabad, who refused to put up the property to sell without the previous sanction of the Governor of Bombay in Council as required by section 31, clause 2, of Bombay Act VI of 1888.

The decree-holder thereupon applied to the Subordinate Judge of Dhandhuka, who had passed the decree, praying for an order to the Collector to sell the property as directed by the decree.

The Subordinate Judge rejected this application, on the ground that the decree sought to be executed having been passed *after* the coming into force of the Tálukdári Act (VI of 1888), sanction of the Government of Bombay was necessary under section 31, clause 2, of the Act, before the property could be sold in execution. He, therefore, declined to interfere with the Collector's order.

This decision was upheld, on appeal, by the Acting Joint Judge.

Against this decision the decree-holder preferred a second appeal to the High Court.

*Máneksháh Jehángirsháh* (with him *Gokaldás Kahándás Párekhh*) for appellant:—The question is, whether section 31 of Bombay Act VI of 1888 is retrospective so as to affect a mortgage effected before the Act came into force. The language of the section shows that it is not. Clause 1 of the section does not affect any incumbrances on a *tálukdári* estate made before the passing of the Act. An incumbrance includes a mortgage like the present. So, too, clause 2 of the section does not affect any sale or other alienation made before the Act came into force. In the present case the decree sought to be executed is based on a mortgage-bond which was passed long before the Act came into force. Under that bond the mortgagee had a right to bring the property to sale. That right was not taken away by section 31 of the Act. The principle laid down in *Kalián Moti v. Pathubháí*<sup>(1)</sup>

(1) I. L. R., 17 Bom., 289.

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applies to the present case. The Act does not affect vested rights. Refers to *Bái Hariganga v. Tulsidás*<sup>(1)</sup> and *Vináyak Moreshtar v. Bába Shábudin*<sup>(2)</sup>.

There was no appearance for the respondent.

JARDINE, J. :—The *sán*-mortgage was executed before Bombay Act VI of 1888 came into force. The decree passed upon it and directing the sale of the immoveable property hypothecated bears date subsequent to the Act coming into force, which circumstance distinguishes the present case from *Kalián Moti v. Pathubháí*<sup>(3)</sup>.

The Courts below have held that the Collector is justified in declining to carry out the sale, on the ground that the sanction of the Government of Bombay required by the Act has not been obtained.

Mr. Máneksháh contends that the principle of the above cited decision applies, the *sán*-mortgage being an incumbrance within the definition of section 2 and left with its validity untouched by section 31, clause 1. We think that the inference is that the Legislature did not intend by that section to interfere with the ordinary remedy of the mortgagee, and we, therefore, must construe clause 2 by the light of clause 1 and exempt from the operation of the latter clause alienations which the former is intended to leave valid. For these reasons we are of opinion that the sanction of the Governor in Council is not required to the sale under the decree obtained on the mortgage. We now reverse the orders of the lower Courts and direct the Subordinate Judge to dispose of the *darbhást* in accordance with this judgment.

*Order reversed.*

(1) P. J. for 1887, p. 69.

(2) I. L. R., 13 Bom., 373.

(3) I. L. R., 17 Bom., 289.