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arrears due for certain years previous to 1899. It is open to him to pay the amount and then sue the Municipality for a refund; on the other hand, it is open to the Municipality to recover the amount by a distress warrant and sale. In either case, it cannot be said that there exists no standard for ascertaining the actual damage likely to be caused to the appellant or that pecuniary compensation cannot be given for the invasion of the appellant's right. It is discretionary with a Civil Court to grant an injunction, and that discretion must be exercised judiciously with extreme caution and only in very clear cases. The present is not a case of that kind. We confirm the decree with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Crowe and Mr. Justice Chandavarkar.

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March 16.

KONDIBA BIN BABAJI (ORIGINAL DEFENDANT No. 2), APPELLANT, v. NANA SHIDRAO AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANT No. 1), RESPONDENTS.*

Registration—Priority—Unregistered deed accompanied with possession—Subsequent sale by registered deed—Effect of possession—Possession for purposes of notice equivalent to registration—Duty of purchaser to inquire as to nature of possession—Registration Act (III of 1877), sections 49, 50.

On the 16th June, 1876, Revapuri mortgaged the lands in suit to the first defendant with possession, and the latter on the 26th June, 1876, leased them to the second defendant for one year. The second defendant remained in possession as tenant after the year had expired. On the 3rd December, 1878, while defendant 2 was in possession of the lands as tenant, Revapuri sold to him (defendant 2) her equity of redemption for Rs. 95. The deed of sale was not compulsorily registrable under the Act then in force, and owing to the death of Revapuri it was not registered. On the 8th December, 1895, the heir of Revapuri sold the equity of redemption in the mortgage of 1876 by a registered deed to the plaintiff. At the date of this sale to the plaintiff the second defendant was still in actual possession. The plaintiff brought this suit to redeem the lands from the mort-

* Second Appal No. 528 of 1901.

gagee (defendant 1), and added defendant 2 as a party, alleging that he was in possession as a tenant of the first defendant. The lower Courts passed a decree for the plaintiff, holding that his registered deed gave him priority over the second defendant, whose deed was unregistered. On appeal,

Held (reversing the decree of the lower Courts), that the plaintiff's suit should be dismissed. Possession in certain cases, for the purposes of notice, has the same effect as registration. The plaintiff at the date of his purchase had notice of the possession of the second defendant, and that being so, it was the plaintiff's duty to inquire of the second defendant under what title he held, and if the plaintiff had done so, instead of assuming that the second defendant was still holding merely as tenant, he would have discovered that the second defendant had purchased the land.

SECOND appeal from the decision of G. C. Whitworth, District Judge of Sátára, confirming the decree passed by Ráo Sáheb B. Y. Gupte, Subordinate Judge of Mádha.

Suit for redemption. The plaintiff sued for the redemption of a mortgage of certain land executed on the 16th June, 1876, to the first defendant (Bahirjirao), alleging that he (plaintiff) had bought the equity of redemption on the 8th October, 1895, and that his deed was duly registered.

Defendant 2 alleged that he had purchased the equity of redemption in the mortgaged land on the 3rd December, 1878; that his deed was not compulsorily registrable under the Act then in force, and had not been registered in consequence of the death of the vendor, but that he (defendant 2) had been ever since in possession as owner, and he pleaded (*inter alia*) that the plaintiff's suit was barred by limitation.

It appeared that the lands in question belonged originally to one Revapuri. On the 16th June, 1876, she mortgaged them with possession to the first defendant (Bahirjirao) for Rs. 1,000, who thereupon on 26th June, 1876, leased them to the second defendant for one year only, but the latter continued to hold them as a tenant of the first defendant after the expiration of the lease.

On the 3rd December, 1878, Revapuri sold her equity of redemption to defendant 2 for Rs. 95. The deed of sale, as already stated, was not compulsorily registrable and was not registered, as Revapuri died before it could be registered.

On the 8th October, 1895, Rampuri, the heir of Revapuri, sold

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the equity of redemption in the mortgage of 1876 to the plaintiff under a deed of sale which was registered.

The plaintiff filed this suit in 1898 to redeem the mortgage of 1876. He made the second defendant a party, alleging that he held the lands as a tenant of defendant 1.

The Subordinate Judge held that the plaintiff's purchase was entitled to priority over the purchase by defendant 2, as his deed of sale was registered. He therefore passed a decree for redemption in plaintiff's favour.

This decree was confirmed on appeal by the District Judge.

Defendant 2 appealed to the High Court, contending, among other things, that the lower Courts were wrong in giving priority to plaintiff's registered sale-deed; inasmuch as his (defendant's) deed, although not registered, was accompanied with possession.

M. B. Choubal for the appellant (defendant 2).

D. A. Khare for respondent No. 1 (plaintiff).

The following cases were referred to:—*Keshav v. Vinayak*⁽¹⁾; *Jethabhai v. Girdhar*⁽²⁾; *Chunilal v. Ramchandra*⁽³⁾; *Chinto v. Janki*⁽⁴⁾; *Kantheppa v. Sheshappa*⁽⁵⁾; *Lakshmandas v. Dasrat*⁽⁶⁾; *Waman v. Dhondiba*⁽⁷⁾; *Nallamuttu v. Betha*⁽⁸⁾; *Cholmondeley v. Clinton*⁽⁹⁾; *Pencil v. Luscumb*⁽¹⁰⁾.

CHANDAVARKAR, J.:—The points of law involved in the second appeal turn upon certain facts which are not in dispute and which may be shortly stated.

On the 16th of June, 1876, one Revapuri mortgaged the land in dispute to defendant No. 1, Bahirjirao bin Shidojirao. It was a mortgage with possession. The mortgagee, defendant No. 1, leased the land to defendant No. 2, Babaji, under a *kabulayat* for one year on the 26th of June, 1876.

On the 3rd of December, 1878, when defendant No. 2 was in possession as a tenant of the mortgagee (defendant No. 1), the

(1) (1893) 18 Bom. 355.

(2) (1894) 20 Bom. 158.

(3) (1896) 22 Bom. 213.

(4) (1892) 18 Bom. 51.

(5) (1897) 22 Bom. 893.

(6) (1882) 6 Bom. 168.

(7) (1879) 4 Bom. 126.

(8) (1899) 23 Mad. 37.

(9) (1820) 2 J. & W. 1.

(10) (1728) Moseley 72, 122.

mortgagor, Revapuri, sold to defendant No. 2 her equity of redemption for Rs. 95. The deed of sale was not registered, not being compulsorily registrable under the Registration Act then in force. From that time up to the date of the present suit defendant No. 2 has continued in possession of the land.

On the 8th of October, 1895, one Rampuri, an heir of Revapuri, sold the equity of redemption by a registered deed to the plaintiff, Shidrao Keshavrao Shinde.

The plaintiff brought this suit to redeem the land from defendant No. 1, adding defendant No. 2 as a party, and alleging that he was in possession as a tenant of defendant No. 1.

Both the lower Courts have awarded his claim, holding that the plaintiff's registered deed is entitled to priority over the unregistered deed of defendant No. 2 under section 50 of the Registration Act (III of 1877). Defendant No. 2 has filed this second appeal.

Mr. Chaubal, for the appellant, has contested the legal propriety of the decree of the lower Appellate Court on three grounds: (1) that there can be no competition under section 50 of the Registration Act between the plaintiff's registered and defendant No. 2's unregistered deed, because the vendor in either case is not the same; (2) that, assuming that section 50 applies, defendant No. 2, having dealt with the land as owner in possession for more than twelve years from the date of his purchase, acquired an indefeasible title to it by adverse possession at the date of the plaintiff's purchase, so that the plaintiff's vendor had no title to sell; (3) that assuming no case of adverse possession arises in favour of defendant No. 2, his possession at the date of the plaintiff's purchase was notice to the latter of his title as owner acquired under his unregistered sale-deed.

As to the first of these points, it is, we think, unarguable and is, moreover, covered by authority by which we are bound. Though the person under whom the plaintiff claims is not the same from whom defendant No. 2 purchased the equity of redemption, he (*i. e.*, the plaintiff's vendor) is found by both the lower Courts to be the heir of defendant No. 2's vendor and to have sold the property to the plaintiff in that character,

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Legally, therefore, it is the same person who sold the property in either case. This view is supported by the decision of this Court in *Chunilal v. Ramchandra*,⁽¹⁾ following *Makandas v. Shankardas*.⁽²⁾

The second of the grounds urged by Mr. Chaubal in this second appeal presents more difficulty, having regard to the fact that defendant No. 2 admittedly came into possession under and by virtue of an assignment from the true owner. The question is whether he can, under those circumstances, be said to have been in possession adverse to the owner. The definition of adverse possession is that it is possession which is wrongful, and it cannot be said that defendant No. 2 first entered and then continued in possession for more than twelve years as a wrong-doer. We do not think, however, that it is necessary to decide the question of adverse possession which arises in the case, and we refrain from expressing any opinion on it, because we are satisfied that the appellant must succeed on the third ground urged by Mr. Chaubal.

It is found by the lower Appellate Court that defendant No. 2 was in actual possession at the date of the plaintiff's purchase. The law is too well established in this Presidency to be doubted, that possession may have in certain cases, for the purposes of notice, the same effect as registration. The decided cases which have laid that down as the law have all been collected by Mr. Justice Batty in his recent judgment in *Tajudin v. Govind*.⁽³⁾ The lower Appellate Court does not appear to have lost sight of that legal principle in deciding this case; but the view it has taken is that defendant No. 2's actual possession was not notice to the plaintiff of the previous sale, because that possession can be "referred to the lease granted to him by the first defendant, the mortgagee." We are of opinion that this view of the lower Appellate Court is erroneous. If the plaintiff had notice of defendant No. 2's actual possession—and on the finding of the lower Court we must hold that he had—it must be held also that he had constructive notice of the real title on which defendant No. 2

(1) (1896) 22 Bom. 213.

(2) (1875) 12 Bom. H. C. 241.

(3) (1901) 5 Bom. L. R. 143.

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was in enjoyment of the land. Having had notice of defendant No. 2's possession, it was his duty to inquire of defendant No. 2 under what title defendant No. 2 really held, and had he inquired he would have discovered defendant No. 2's purchase.

The law on the subject is thus stated by the editors of White and Tudor's Equity Cases in their notes on the leading case of *Le Neve v. Le Neve*⁽¹⁾: "As a general rule if a person purchases and takes a conveyance of an estate which he knows to be in the occupation of another than the vendor, he is bound by all the equities which the party in such occupation may have in the land; for possession is *prima facie* seisin; and the purchaser has, therefore, actual notice of a fact by which the property is affected, and he is bound to ascertain the truth." In *Mancharji Sorabji Chulla v. Kongoseo*,⁽²⁾ Couch, C.J., went at some length into the question and came to the same conclusion. He there cited the English cases on the subject, the first of which was *Taylor v. Stibbert*,⁽³⁾ where Lord Rosslyn said: "I have no difficulty to lay down, and am well warranted by authority, and strongly founded in reason, that whoever purchases an estate from the owner, knowing it to be in the possession of tenants, is bound to inquire into the estates these tenants have"

It was sufficient to put the purchaser upon inquiry, that he was informed the estate was not in the actual possession of the person with whom he contracted; that he could not transfer the ownership and possession at the same time; that there were interests, as to the extent and terms of which it was his duty to inquire." The next case cited by Couch, C.J., is that of *Jones v. Smith*,⁽⁴⁾ where Vice-Chancellor Wigram said: "First, it was said that if a person purchases an estate which he knows to be in the occupation of another than the vendor, he is bound by all the equities which the party in such occupation may have in the land. I do not dispute this proposition (*Allen v. Anthony*⁽⁵⁾; *Daniels v. Davison*⁽⁶⁾; *Taylor v. Stibbert*⁽³⁾) for possession is *prima facie* evidence of a seisin in fee." Then of *Daniels v. Davison*,⁽⁶⁾ Couch, C.J., said: "The Lord Chancellor held that where

(1) 2 W. & T. L. C. 225 (7th Edn.)

(4) (1841) 1 Hare 43, 60.

(2) (1869) 6 Bom. H. C. 59.

(5) (1816) 1 Mer. 282.

(3) (1794) 2 Ves. Jun. 437, 439.

(6) (1809) 16 Ves. 249; 17 Ves. 433.

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there is a tenant in possession under a lease, or an agreement, a person purchasing part of the estate must be bound to inquire on what terms that person is in possession; that a tenant being in possession under a lease, with an agreement in his pocket to become the purchaser, those circumstances altogether give him an equity repelling the claim of a subsequent purchaser who made no inquiry as to the nature of his possession." Couch, C.J., then says: "Although *Daniels v. Davison*⁽¹⁾ has always been considered an extreme case, beyond which the doctrine ought not to be extended, it has to that extent been repeatedly acted upon (*Bailey v. Richardson*⁽²⁾; *Barnhart v. Greenshields*⁽³⁾; *Knight v. Bowyer*⁽⁴⁾). I am not aware of any decision where the doctrine has been applied to the case of a person being in possession as the object of a charitable trust and under the trust, but I can see no difference in principle between this and the possession of a tenant, as the duty to make inquiry arises from the fact that the estate is not in the actual possession of the vendor. There is the same equity in both cases."

This decision of Couch, C.J., was approvingly cited by Sargent, C.J., and Melvill, J., in *Santaya v. Narayan*.⁽⁵⁾ The most recent case that we have been able to find where the same law is expounded is that of *Hunt v. Luck*,⁽⁶⁾ where Vaughan Williams, L.J., says (Stirling and Cozens-Hardy, L.J.J., concurring): "If a purchaser or a mortgagee has notice that the vendor or mortgagor is not in possession of the property, he must make inquiries of the person in possession—of the tenant who is in possession—and find out from him what his rights are, and if he does not choose to do that, then whatever title he acquires as purchaser or mortgagee will be subject to the title or right of the tenant in possession. That, I believe, is a true statement of the law."

It follows, then, both on principle and authority, that the plaintiff having had notice of defendant No. 2's actual possession at the date of his (plaintiff's) purchase, was bound to inquire of him as to the nature of his possession, instead of assuming

(1) (1809) 16 Ves. 249; 17 Ves. 433.

(2) (1852) 9 Hare 734.

(3) (1853) 9 Moo. P. C. C. 13.

(4) (1857) 23 Beav. 609.

(5) (1883) 8 Bom. 182.

(6) (1902) 1 Ch. 428 at p. 433.

that because that possession had originally commenced under a tenancy, it must have continued under that title on the day when the plaintiff purchased the land.

On this ground, therefore, we are of opinion that the decree of the lower Appellate Court should be reversed and the plaintiff's claim rejected with costs throughout on him.

Decree reversed.

ORIGINAL CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

THE BOMBAY BURMAH TRADING CORPORATION, LIMITED,
PETITIONERS, v. DORABJI CURSETJI SHROFF, OPPOSER.

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March 20.

Privy Council—Application for leave to appeal—Companies Memorandum of Association Act (XII of 1895), sections 9 and 10—Appeal against order passed under the Act—Test of pecuniary sufficiency or substantial question of law—Civil Procedure Code (Act XIV of 1882), sections 594, 595 and 627—Case otherwise fit for appeal—Practice—Procedure.

A petition by a Company for the confirmation of a special resolution altering the Memorandum of Association was dismissed by the High Court.

The Company desired to appeal to His Majesty in Council. Leave to appeal was opposed on three grounds: (1) that no appeal lay under the Memorandum of Association Act or Companies Act; (2) that the pecuniary test was not satisfied; (3) that there was no substantial question of law.

Held, that the order dismissing the petition was a "decree" within the definition of that term contained in section 594 of the Code.

Held, as to objections (2) and (3), that the only question was whether the case was a fit one for appeal to the King in Council within the meaning of clause (b) of section 595.

Held, further, that having regard to the fact that the commercial and financial position of the Company might be seriously affected by the questions at issue, and to the importance to Indian Companies generally of having such rights precisely defined, the case ought to be certified as a fit one for appeal to His Majesty in Council.

Held, further, that the proceedings fell within Chapter XLV of the Civil Procedure Code.

APPLICATION by the above Company for leave to appeal to the Privy Council.