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expressed in the old maxim *actio personalis moritur cum persona*, as well as necessarily upon the personal law of Mahomedans and Hindus. Since that, in our opinion, is unmistakably the effect of section 89 of the Probate and Administration Act, we think that its operation must be strictly confined to the persons named in it. We are, therefore, unable to accede to Mr. Jinnah's contention that the section is capable of being extended so as to include heirs and representatives who are neither executors nor administrators; within the clear definition of those terms contained in the Probate Act.

We see, however, no objection to the course proposed, should the Court adopt this view, namely, that the plaintiffs be now allowed to take out Letters of Administration with the least possible delay and that pending doing so, the hearing of this appeal be adjourned.

Order accordingly.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

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August 30.

BAGAS UMARJI MIYAJI (ORIGINAL DEFENDANT 5), APPELLANT, v. NATHA-BHAI UTAMRAM AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANT 6), RESPONDENTS.*

Limitation Acts (XV of 1877 and IX of 1908), Article 134—Mortgage—Transfer by mortgagee—Rights of the transferee—Redemption—Construction of statute—Legislative exposition.

The plaintiffs sued in the year 1906 to redeem a mortgage effected prior to the year 1854. The representatives-in-title of the mortgagee, claiming to be absolutely entitled, mortgaged the land with possession to A in 1894 and he sold his rights to defendant 5. The suit having been brought more than twelve years after the alienation to A, defendant 5 claimed as against the plaintiffs the interest of a mortgagee by virtue of his adverse possession under Article 134 of the Limitation Act (XV of 1877).

* Appeal No. 46 of 1910 from order.

Held, that it was obligatory on the plaintiffs to redeem defendant 5 before they could recover possession of the property.

Yesu Ramji Kalnath v. Balkrishna Lakshman⁽¹⁾, *Maluji v. Fakirchand*⁽²⁾ and *Ramchandra v. Sheikh Mohidin*⁽³⁾, followed.

Abhiram Goswami v. Shyama Charan Nandi⁽⁴⁾ and *Ishwar Shyam Chand Jiu v. Ram Kanai Ghose*⁽⁵⁾, explained.

The alteration in the language of Article 134 of the Limitation Act (IX of 1908) was a legislative recognition of the soundness of the view that the Article was intended to give protection to all transferees for value including mortgagees.

Swift v. Jewsbury⁽⁶⁾ and *Morgan v. London General Omnibus Company*⁽⁷⁾, referred to.

APPEAL against an order of remand passed by M. B. Tyabji, District Judge of Broach, against the decree of Karpurram Manmathram, First Class Subordinate Judge.

Redemption suit.

The lands in dispute originally belonged to one Tuljaram Harkhaji who mortgaged them with possession to Bapuji Anuji in the year 1853. The property remained in the possession of Bapuji Anuji till his death and then it passed into the possession of his representatives, defendants 1-4.

On the 23rd April 1856 Tuljaram's rights in the lands were sold to one Govindram, an ancestor of the plaintiffs.

Bapuji's representatives, defendants 1-4, mortgaged the lands to Achratlal with possession for Rs. 1,775 on the 3rd April 1894, and in 1896 they passed a fresh mortgage-deed to Achratlal for Rs. 2,499 including Rs. 1,775. In January 1903 they passed a further mortgage for Rs. 281 to Achratlal's sons Ratilal and Shivalal.

On the 16th April 1903 Bagas Umarji Miyaji (defendant 5) purchased the rights of Achratlal's sons in the lands for Rs. 2,780 and on the 7th July 1907 he purchased from defendants 1-4 their interest in the lands for Rs. 4,100 which included Rs. 2,780.

(1) (1891) 15 Bom. 533.

(2) (1896) 22 Bom 225.

(3) (1899) 23 Bom. 614.

(4) (1909) L. R. 36 I. A. 148.

(5) (1911) 38 Cal. 526.

(6) (1874) L. R. 9 Q. B. 301 at p. 312.

(7) (1883) 12 Q. B. D. 201.

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On the 4th October 1906 the plaintiffs filed the present suit to redeem the mortgage of 1853.

Defendants 1-4, the representatives of Anuji Bapuji, set up the mortgage to Achratlal and the purchase by Bagas Umarji Miyaji.

Defendant 5, Bagas Umarji Miyaji, answered that he was a *bona fide* purchaser of the property for Rs. 4,100, that the plaintiffs had no right to sue and that the claim was time-barred.

The Subordinate Judge dismissed the suit holding that it was time-barred.

On appeal by the plaintiffs the District Judge found that there was no bar of limitation to the suit and that the plaintiffs should redeem the incumbrances in favour of defendant 5 before they could recover possession. He, therefore, reversed the decree and remanded the case for findings on the following points :—

(1) What sum should the plaintiffs pay before they can recover the property? (2) Which parties are entitled to the amount found due? (3) On what terms should redemption of the property be allowed?

Against the order of remand defendant 5 appealed to the High Court contending *inter alia* that the suit was time-barred. The plaintiffs preferred a cross-objection urging that they were not liable to pay anything to defendant 5 as transferee of the mortgage rights of Achratlal.

Branson with *G. K. Parekh* for the appellant (defendant 5).

D. A. Khare for respondents 1-4 (plaintiffs 1-4).

Ratanlal Ranchoddas for respondent 2 (plaintiff 2).

SCOTT, C. J. :—The main facts of the case are that the plaintiff seeks to redeem a mortgage effected prior to 1854. The representatives-in-title of the mortgagee, claiming to be absolutely entitled mortgaged the land with possession to the fifth defendant's predecessor-in-title Achratlal Govandas, in 1894. This suit was filed more than twelve years later and the fifth defendant claims as against the plaintiff the interest

of a mortgagee by virtue of his adverse possession under Article 134 of the Limitation Act. The lower appellate Court has upheld this contention, which is supported by the authority of three judgments of this Court: *Yesu Ramji Kalnath v. Balkrishna Lakshman*⁽¹⁾, *Maluji v. Fakirchand*⁽²⁾, and *Ramchandra v. Sheikh Mohidin*⁽³⁾, in all of which a mortgagee from one who professed to hold absolutely was held to be a purchaser for valuable consideration within the meaning of the Article. It is contended for the respondents upon cross-objections that this interpretation of Article 134 is inconsistent with the judgment of the Judicial Committee in *Abhiram Goswami v. Shyama Charan Nandi*⁽⁴⁾. In that case their Lordships were considering the applicability of the Article to a person claiming a title by adverse possession under a permanent lease. The distinction between a leasehold and an absolute interest was pointed out and the conclusion arrived at was that their Lordships were unable to give to the Limitation Act the wider interpretation adopted by the High Court at Calcutta and to treat the lessee as a purchaser under Article 134 of the Act of 1877. The purchaser, their Lordships said, must be the purchaser of an absolute title.

The question is whether this expression of opinion should be treated as overruling the Bombay decisions on titles based upon adverse possession of mortgagees.

First, it is necessary to bear in mind the observations of Lord Halsbury in *Quinn v. Leathem*⁽⁵⁾ that every judgment must be read as applicable to the particular facts proved and assumed to be proved since the generality of the expressions that may be found there are not intended to be expositions of the whole law but governed and qualified by the particular facts of the case in which such expressions are to be found.

This caution is particularly necessary in the present connection because it appears from the report in *Abhiram Goswami v. Shyama Charan Nandi*⁽⁴⁾ that none of the cases in which a mortgagee has been treated as a purchaser for value within

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(3) (1899) 23 Bom. 614.

(2) (1896) 22 Bom. 225.

(4) (1909) L. R. 36 I. A. 148.

(5) [1901] A. C. 495 at p. 506.

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the meaning of Article 134 were referred to in argument or in the judgments of the High Court or the Judicial Committee.

On the other hand in confirmation of the conclusion arrived at in the Bombay cases we have referred to it is permissible to note the altered wording of Article 134 as it appears in the Limitation Act of 1903. For the words of Article 134 of the Act of 1877 "and afterwards purchased from the trustee or mortgagee for a valuable consideration" are substituted the words "and afterwards transferred by the trustee or mortgagee for a valuable consideration" this we take to be a legislative recognition of the soundness of the view that the Article was intended to give protection to all transferees for value including mortgagees. In support of the reference to the later Act as a legislative exposition of the earlier one we may refer to *Swift v. Jewsbury*⁽¹⁾ and *Morgan v. London General Omnibus Company*⁽²⁾. It is also material to observe that in the very recent case, *Ishwar Shyam Chand Jiu v. Ram Kanai Ghose*⁽³⁾, Lord Macnaghten in delivering the judgment of the Judicial Committee said with reference to the case of *Abhiram Goswami v. Shyama Charan Nandi*⁽⁴⁾, "Whatever might have been the inclination of their opinion if the matter had been *res integra*, it seems to their Lordships that they would not be justified in reviewing on an *ex parte* application the considered judgment of the Board delivered after full argument. They will, therefore, simply follow the decision in *Abhiram Goswami v. Shyama Charan Nandi*⁽⁴⁾. They do so with the less hesitation because the language of the Article under discussion in that case and in this has been altered by subsequent legislation."

In our opinion the cross-objection fails for the above reasons.

We see no cause to interfere with the remand order which is appealed against. We dismiss both the appeal and the cross-objection with costs on the parties respectively preferring them.

Decree confirmed.

G. B. R.

(1) (1874) L. R. 9 Q. B. 301 at p. 312.

(3) (1911) 38 Cal. 526.

(2) (1883) 12 Q. B. D. 201.

(4) (1909) L. R. 36 I. A. 148.