

APPELLATE CIVIL.

1917.

*Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Beaman.*February 9.

IMAM VALAD IBRAHIM AND ANOTHER (ORIGINAL DEFENDANTS NOS. 2 AND 3),
APPELLANTS v. BHAU APPAJI JADHAV AND OTHERS (ORIGINAL PLAINT-
IFFS AND DEFENDANTS NOS. 1 AND 4), RESPONDENTS.*

Registration Act (XVI of 1908), sec. 17—Compulsory Registration—Rajinama and Kabulayat—Mortgage of lands in an Inam village—Mortgagor passing a Rajinama in favour of a third person—Kabulayat by the person to the Inamdar—Transfer of Khata in Inamdar's books—Extinction of the equity of redemption.

One A, holder of lands in an Inam village mortgaged the lands with one R (father of defendants Nos. 2 and 3) in 1871. In 1875, A passed a Rajinama in favour of one J and gave notice to the Inamdar to transfer his Khata in the Inamdar's books to the name of J. J on the same day passed a Kabulayat to the Inamdar agreeing to pay assessment due to Government. J in turn had the Khata transferred to one V who in 1878 executed a Rajinama in favour of defendant No. 2. In 1913, plaintiffs as the heirs of A sued to redeem the property. The defendants Nos. 2 and 3 contended that they had become owners of the lands. The Subordinate Judge dismissed the suit holding that A transferred his interest in the lands by the Rajinama in 1875 and, therefore, the plaintiffs had no interest in the lands as owners. The Assistant Judge, in appeal, reversed the decree and allowed redemption on the ground that the Rajinama by A could not be proved in Court as it required registration. On appeal to the High Court,

Held, that the plaintiffs' suit to redeem must fail as the Rajinamas and Kabulayats although not registered were good evidence of the transfer having taken place since they were documents between the occupant and his superior holder and not documents between the transferor and the transferee: they recited the transfer which had taken place presumably for consideration but they themselves did not purport to operate as transferring any interest to another.

Held, further, that even assuming that they fell within the terms of section 17 of the Indian Registration Act, 1908, as operating to extinguish an interest in immoveable property it was not shown that they required registration, the interest extinguished by them being of a value less than Rs. 100.

* Second Appeal No. 830 of 1915.

Held, also, that at the time these transactions took place from 1875 to 1878 it was not necessary according to the law that there should be any document evidencing the transfer, but payment of price and delivery of possession completed the transaction.

1917.

IMAM VALAD
IBRAHIMv.
BHAU
APPAJI.

SECOND appeal against the decision of A. Montgomerie, Assistant Judge at Belgaum, reversing the decree passed by K. S. Kulkarni, Subordinate Judge at Athani.

Suit for redemption.

The lands in suit were situated in an Inam village and were originally owned by one Anandrao. In 1871, Anandrao mortgaged them with possession to Ibrahim, father of defendants Nos. 2 and 3 and Rachappa, father of defendant No. 4. Rachappa's rights were subsequently acquired by defendants Nos. 2 and 3.

In 1875, Anandrao passed a Rajinama by which he addressing the Inamdar of the village stated that he gave notice that he had that day transferred his Khata together with all the rights appertaining to the same to Jyoti bin Appaji Chavan. On the same day Jyoti passed a Kabulayat to the Inamdar stating that the valiwat of the Khata land be entered in his name and that he would be responsible to pay all arrears of revenue due to Government in respect of the land.

Jyoti in turn had the Khata transferred to one Vishnu Narayan who in 1878 executed a Rajinama in favour of defendant No. 2.

In 1913 plaintiffs, grandsons of the original mortgagor Anandrao, sued to redeem the mortgage of 1871.

Defendants Nos. 2 and 3 who alone defended the suit pleaded that in consequence of the several Rajinamas and Kabulayats they had become owners of the land; that the suit was barred by *res judicata* and limitation.

The Subordinate Judge held that the suit was barred by *res judicata* and that the defendants had become

1917.

IMAM VALAD
IBRAHIM

v.

BHAU
APPAJI.

owners of the land. He, therefore, dismissed the suit with the following observation on the question of the defendants' title :

" Entering into the question of title again we find that Anandrao transferred his interest in the land by a Rajinama in 1875 (Exhibit 61). This Rajinama was a mode of transferring lands which was then usual (vide, I. L. R. 11 Bom. 174). Anandrao reserved no rights to himself by the wordings of this Rajinama. The transfer was, therefore, complete and every right of the mortgagor was extinguished. The only remaining outward symbol of ownership was the Khata of Anandrao. Possession had been already given to the mortgagee in 1871. This Rajinama in favour of a stranger Jyoti in 1875 left nothing to Anandrao or his heirs (vide, I. L. R. 1 Bom. 91). The land being in an Inam village, the Rajinama was given to the Inamdar. The Khata of the lands has been accordingly taken from plaintiffs' family since 1875. Plaintiffs have thus no interest in the land as owners and are not therefore entitled to maintain this suit for redemption."

The Assistant Judge, on appeal, reversed the decree and allowed the plaintiffs to redeem on the ground that the Rajinamas and Kabulayats in alienated villages had no legal standing at the time these transactions took place; that the Rajinama by which Anandrao transferred his interest to the Inamdar was a document which required registration and so it could not be proved in Court.

The defendants Nos. 2 and 3 appealed to the High Court.

Coyaji with *P. B. Shingne* for the appellants:—The Rajinama and Kabulayat in this appeal were passed not with a desire to transfer the equity of redemption to the mortgagee and thus to make him absolute owner of the property. They were documents between the occupant and the Inamdar passed with a desire to effect a mutation of Khata and can never be in themselves documents of transfer of property. The transfer was complete by means of oral sale followed by change in the nature of possession: see *Motibhai Jijibhai v.*

Desaibhai Gokalbhai⁽¹⁾; *Venkaji Narayan v. Gopal Ramchandra*⁽²⁾; *Vishnu Sakharam Phatak v. Kashinath Bapu Shankar*⁽³⁾. If the Rajinama and Kabulayat are regarded as extinguishing the equity of redemption, their registration is exempted by section 90 of the Indian Registration Act which should be held as retrospective and failing in this contention there is nothing to show that the interest extinguished was of the value of Rs. 100 or upwards:

Jayakar with *A. G. Desai*, for respondents Nos. 1 and 2:—The Rajinama and Kabulayat were intended to create ownership in the mortgagee. Therefore, the same ought to have been registered. There is nothing to show that the interest extinguished was not of the value of Rs. 100 or upwards. Section 90 of the Registration Act cannot apply to this case and the cases cited on behalf of the appellant do not apply. The case is not governed by Land Revenue Code.

SCOTT, C. J.:—We see no reason to differ from the conclusion by the learned Assistant Judge on the questions of *res judicata* and limitation.

The only other point arising on the appeal is whether the plaintiffs had an equity of redemption remaining in them, and that depends upon whether the Rajinama or the series of Rajinamas upon which the defendants rely required registration. The learned Assistant Judge observes:

“It is perfectly clear that the transactions with regard to the Khata of the land which took place between 1875 and 1878 were intended to transfer ownership. Mutation of names was a well recognized means of transfer. Unfortunately for the defendants, Rajinamas and Kabulayats in alienated villages had no legal standing at the time these transactions took place. Act I of 1865 did not apply to such villages. The Rajinama by which Anandrao transferred his interest to the Mamlatdar was, therefore, a document which required registration, and so it cannot be proved in Court. The result

(1) (1916) 41 Bom. 170.

(2) (1914) 39 Bom. 55.

(3) (1886) 11 Bom. 174.

1917.

IMAM VALAD
IBRAHIM
v.
BHAU
APPANJI

1917.

MAM VALAD
IBRAHIM
v.
BHAU
APPAJI.

is no doubt unfortunate. The defendants who have all along supposed themselves to have an indefeasible title, now find themselves liable to be redeemed by the plaintiffs the conduct of whose predecessor-in-title appears to have been all along thoroughly dishonest. (See remarks by the District Judge in the Judgment in the previous suit)."

The Rajinamas upon which the defendants relied were three in number. First, there was a Rajinama in 1875 by which the mortgagor Anandrao addressing the Inamdar of the Inam village stated that he gave notice that he had that day transferred his Khata together with all the rights appertaining to the same to Jyoti bin Appaji Chavan residing at the place aforesaid. The Rajinama was duly given in writing.

On the same day Jyoti Appaji addressed the Inamdar stating that "the Vahivat of the plot of land of the Government Khata is entered in my name. I agree to that from this day's date. You will be pleased to enter my name in the Government record as the Vahivatdar of this plot of land bearing the above mentioned Survey number in the place of Anandrao bin Mansingrao Jadhav. I hereby agree to pay all the arrears due to Government in respect of this Survey number."

The Inamdar was apparently the grantee of the assessment of the village which primarily was due to Government and was assigned by it to the Inamdar, and although Act I of 1865 did not apply to alienated villages, it is evident from these documents that the Khatas in which mutation of names was effected were kept in the alienated villages in the same way as in villages where there had been no alienation. If upon a transfer of the occupancy rights, the registered occupant did not provide for the mutation of names, he would be liable for the arrears of assessment, and all assessments falling due in future. By the Kabulayat the transferee of the occupancy right agrees to pay those arrears and to be liable in the future. The Rajinama and the Kabulayat both in the case of

Jyoti, and presumably the subsequent documents of the same nature upon which the defendants relied until the Khata came to be registered in their name, are documents between the occupant and his superior holder; and not documents between the transferor and the transferee. They recite the transfer which has taken place presumably for consideration, but they themselves do not purport to operate as transferring any interest to another. If they fall within the terms of section 17 of the Registration Act, it is because in some way they operate to extinguish an interest in immoveable property, either the interest of the occupant to remain on the Khata upon the terms of paying the assessment, or the interest of the Inamdar to receive the assessment from the particular Khatedar. Assuming that by reason of such extinguishment they are documents of the nature aimed at by section 17 of the Registration Act, registration is not necessary unless it is shown that the interest extinguished was of the value of Rs. 100 or upwards. Now the assessment to which the Inamdar was entitled was an assessment of Rs. 18 a year, and there is no evidence as to the amount of any arrears of assessment which Jyoti undertook to discharge. There is nothing to show that the occupant could not relinquish his Khata at any time, provided some other occupant was found to take over the liability for payment of assessment. Therefore, there is no reason to capitalize the assessment of Rs. 18 by any number of years' purchase, and this being so, it is impossible to hold that it is proved that the interest, if any, extinguished by the Rajinama, is of the value of Rs. 100 or upwards. It is, therefore, not shown that the document is compulsorily registrable.

The learned Assistant Judge observes that "the transactions with regard to the Khata of the land which took place between 1875 and 1878 were intended to

1917.

IMAM VALAD
IBRAHEM
of
BHAU
APPARH

1917.

IMAM VALAD
IBRAHIM
v.
BHAU
APPAJI.

transfer ownership." That is, I think, an inaccurate statement, but in this inaccuracy the learned Judge does not stand alone, because similar inaccuracies of statement are to be found in judgments of the High Court over a series of years with reference to Rajinamas and Kabulayats. It would, I think, be more accurate to say that Rajinamas and Kabulayats, that is, transactions with regard to the Khata, are the general accompaniment of transfers of ownership of occupancy rights. The transfer, however, of the beneficial ownership is a transaction not between the Khatedar and his superior holder, but the Khatedar and the incoming occupant. At the time these transactions took place from 1875 to 1878, it was not necessary according to the law that there should be any document evidencing the transfer. Payment of price and delivery of possession completed the transaction. In the case of the owner of the equity of redemption, in property mortgaged with possession to the mortgagee, the only remaining outward symbol of ownership, as the learned Subordinate Judge has well put it, is the Khata, and when the equity of redemption is transferred, arrangements are made for mutation of names, so that the Khata or the outward symbol of ownership, would be in the transferee of the equity of redemption. That is the explanation of the Rajinamas and Kabulayats which resulted in the claim of the defendants to hold the equity of redemption as well as the rights of the mortgagee. The Rajinamas and Kabulayats are good evidence of the transfers having taken place as the defendants claim, since they contain the admissions of the transferors and as it is not shown that they required registration, we are able to decide in accordance with what the Assistant Judge was convinced was the justice of the case. We hold that the defendants are shown to be the owners of the equity of redemption, and therefore, the plaintiffs' suit to redeem must fail. We set aside the decree of the

lower appellate Court and dismiss the suit with costs throughout.

BEAMAN, J.—I concur.

I take this, the earliest opportunity, of correcting a recent judgment I delivered in the case of *Vinayak Hari Paranjpe v. Navajee Parsu Kapse*⁽¹⁾. In the light of the fuller argument we have had in this case, and the many difficulties it has revealed, I realise that in one passage I used much too loose and general language. I should have said that the conjoint effect of a Rajinama and a Kabulayat, between a mortgagor and a mortgagee, or between a mortgagor and a third party, was to indicate that in the first case the equity of redemption had been extinguished, that in the second case, it had been transferred. The fact would, I believe, always be found to be so, though since the actual extinction or transfer must *ex hypothesi* have been effected either orally or by another writing, it is by no means so clear that the fact could always be proved. In the present case I see no reason in law to prevent it. I do not wish to add an unnecessary word to the full explanatory analysis of the true content, and the legal limits to be put upon the scope and effect of such papers, and the statement of the resultant law governing this, and all like cases, in the judgment of the Chief Justice. I am satisfied that it is accurate and must supersede much confusion of thought or expression or both to be found in earlier judgments. It makes this point, which is of capital importance in deciding the case before us, quite clear, that Rajinamas and Kabulayats can never be in themselves documents of transfer between the parties, respectively giving them to the Government or other over-lord.

Decree reversed.

J. G. R.

⁽¹⁾ S. A. 87 of 1915 decided on 23-1-1917 (Un. Rep.).