

## APPELLATE CIVIL.

*Before Mr. Justice Beaman and Mr. Justice Heaton.*

NARSO RAMAJI KULKARNI (ORIGINAL PLAINTIFF), APPELLANT v. NAGAVA KOM ISHVARAPPA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS<sup>o</sup>.

1918.

January 22.

*Rajinama and Kabulayat—Registration—Registration Act (XVI of 1908), section 90—Bombay Land Revenue Code (Bombay Act V of 1879), sections 74, 76.*

Rajinamas and Kabulayats, governed by the Bombay Land Revenue Code (Bombay Act V of 1879), are not compulsorily registrable. They cannot in themselves be documents of transfer; but they are fairly conclusive evidence that a transfer has in fact been made.

SECOND appeal from the decision of L. C. Crump, District Judge of Belgaum, confirming the decree passed by G. V. Kalkot, Subordinate Judge at Bail Hongal.

Suit for accounts.

One Venkappa mortgaged four survey numbers to one Virappa (father of defendant No. 1) for Rs. 300 on the 30th May 1876. The plaintiff, as the assignee of the equity of redemption, sued to take accounts of the mortgage under the provisions of the Dekkhan Agriculturists' Relief Act.

It was contended by defendant No. 1 among other things that the mortgage sued on was extinguished, inasmuch as the original mortgagor had transferred his right under the mortgage to the mortgagee by Rajinamas and Kabulayats. These documents were not registered.

The Court of first instance upheld the defendant No. 1's contention following *Venkaji Narayan v. Gopal Ramchandra*<sup>(1)</sup> and dismissed the suit. This decree was confirmed on appeal.

<sup>o</sup> Second Appeal No. 105 of 1916.

<sup>(1)</sup> (1914) 39 Bom. 55.

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The plaintiff appealed to the High Court.

*Nilkanth Atmaram*, for the appellant.

*S. R. Bakhale*, for the respondents.

BEAMAN, J. :—In this case one Venkaji mortgaged four survey numbers in four lots, that is to say, a quarter of each to each of four mortgagees. The learned Judge of first appeal, it is true, doubts whether these facts are proved, but it is on that footing that the appellant has argued the case and it seems to be the view most favourable to him. I shall, therefore, assume that the facts were as I am now setting them forth and that after these four mortgages, the mortgagor executed a Rajinama in respect of each of the four survey numbers to each one of the four mortgagees, the said mortgagees in turn executing complementary Kabulayats. The effect of these Rajinamas and Kabulayats has frequently been discussed and to more than one judgment on the subject I have been a party. The latest case, *Imam valad Ibrahim v. Bhau Appaji*<sup>(1)</sup>, was decided by Scott C. J. and myself. The learned Chief Justice gave a very exhaustive analysis of the legal content of the matter then in dispute. But I am again in some doubt whether we did not exaggerate our difficulties. I am speaking now of theoretical difficulties generally, because probably in the facts of that case the provisions of the Land Revenue Code, read with section 90 of the Indian Registration Act of 1908, would not have been of much assistance. It may well, however, be doubted whether in proper cases governed by the Land Revenue Code, Rajinamas and Kabulayats stand in need of registration at all. If they do not, although I agree that they cannot in themselves be documents of transfer, they would always, I think, be fairly conclusive evidence that the transfer had in fact been made, and so I might work

<sup>(1)</sup> (1917) 41 Bom. 510.

back to the position I took when deciding a case of this kind (*Venkaji Narayan v. Gopal Ramchandra*<sup>(1)</sup>) with my brother Hayward, where we held that Rajinamas and Kabulayats executed between (to use somewhat loose language) a mortgagor and his mortgagee extinguish the equity of redemption. For if in fact an occupancy holder mortgaged his holding and thereafter agreed with the mortgagee to relinquish his occupancy right in favour of the latter, pursuant to which agreement he handed in his Rajinama and the mortgagee tendered his Kabulayat, the result would carry out the intention of the parties to extinguish any further right the original mortgagor had in the equity of redemption. In effect, we understand that the learned Judge below has found that the possession of the defendants, which *de facto* at any rate seems to have commenced after the mortgagor had handed in his four Rajinamas, was taken in respect of the quarters of the three survey numbers from the new Kabulayatdars. And on that footing he has held that the possession was taken from the true owners and that the mortgagor had no further right subsisting. As regards the fourth number, that of which the defendant himself became the Kabulayatdar or occupancy holder, the learned District Judge says that it is not disputed that the mortgage was extinguished as regards that land. Probably because the learned Judge was much more conversant with the facts than we were when the case was opened, we found some difficulty in understanding his judgment. But we have little doubt that in the result his finding is right and that there was no equity of redemption outstanding in 1912 when the descendant of the original mortgagor purported to convey it to the plaintiff. If that be so, then the plaintiff has no right upon which he can ask the Court to be allowed to redeem and his suit must fail.

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We think that this appeal should be dismissed with all costs.

HEATON, J.:—I agree. We are settling this case on certain representations made by the pleader for the appellant, and accepting those representations as the correct presentment of the facts, the conclusion evidently is in my opinion that stated by my learned brother. As certain cases have been referred to, the judgments in which deal with this matter of Rajinamas and Kabulayats, I should like to refer to a judgment of my own in the case of *Motibhai Jijibhai v. Desaibhai Gokalbhai*,<sup>(1)</sup> in which I find, as a result of the argument before us, I think, nothing that I need change. The only thing I would like to add being that possibly I exaggerated the supposed difficulty arising from the circumstance that Kabulayats unlike Rajinamas are not exempted from registration. For I think it is quite possible it will be found that they are exempted from registration in consequence of the provisions of clause (b), section 90 of the Registration Act, as they appear to evidence assignments by Government of an interest in land. However that may be, I do not doubt that in this case the decree of the lower appellate Court is correct and should be affirmed.

*Appeal dismissed.*

B. B.

<sup>(1)</sup> (1916) 41 Bom. 170.