

evidence of the transaction between first and second defendants, and it was quite competent therefore to the Courts below to base their findings upon other evidence if any such existed.

Now the Razināma is not the only evidence of the conveyance. There is the pattá standing in second defendant's name, there is second defendant's evidence, and there is the fact of three years' possession by him, on all of which the Courts might find as they have found, that there was a sale to second defendant in 1875 not by a writing but by oral agreement.

Such agreement followed by possession is not by the Registration Act deprived of its legal effect. At the date of the sale to plaintiff, therefore, first defendant was without title to sell and plaintiff took nothing by the registered sale. The second appeal should be dismissed with costs.

1879.
January 8.
VENKATESA
v.
SENGODA.

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Muttusāmi Ayyar.

PADMANABHA (DEFENDANT) APPELLANT, v. THANAKOTI
(PLAINTIFF) RESPONDENT.*

1879.
January 29.

PADMANABHA
v.
THANAKOTI.

Decree—Right of severance.

The right under a decree cannot be severed, so that the remedy against the person can remain in or pass to one, and the alternative remedy against the property pass to another.

PLAINTIFF brought this suit for the establishment of his right to a quarter share of a house and for arrears of rent. The District Munsif and the District Judge decreed in favor of the plaintiff, with modifications as to the amount of rent claimed.

The defendant preferred a second appeal.

V. Bhashyam Ayyangar for the Appellant.

Mr. Lascelles for Respondent.

The facts and arguments are fully set forth in the following

JUDGMENT:—In this suit plaintiff sought to establish his right of ownership in a quarter of a bungalow, of the remaining three-fourths of which the defendant was the owner, and (as the

* Second Appeal No. 527 of 1878, against the decree of F. Brandt, District Judge of Trichinopoly, dated 24th June 1878, amending the decree of the District Munsif of Trichinopoly, dated 10th April 1877.

PADMANABHA
v.
THANAKOTI.

bungalow is not divisible) his right to share in the rent to the extent of a quarter of it.

The bungalow originally belonged to a Mr. Gray, who in 1853 sold three-fourths of the bungalow to the father of one Venkatá-challam Sámi Chetti. In 1866 Venkatáchallam Sámi Chetti brought a suit (51 of 1866) for 16,000 rupees against Mr. Gray.

By a Rázináma decree in that suit, the remaining quarter bungalow was made liable for the decree amount. Venkatá-challam Sámi Chetti became indebted to Rámanna Chetti, who in execution of his decree in Original Suit No. 17 of 1869, attached and eventually sold by Court auction the right, title, and interest of Sámi Chetti in the entire bungalow. This was on the 4th January 1870.

The defendant in the present suit purchased what was put up to sale.

On the 14th July 1871 Sámi Chetti assigned to plaintiff's father his interest in the Rázináma decree. Plaintiff's father proceeded to execute the decree and attached the right, title, and interest of Mr. Gray in the bungalow, and on sale by Court auction became himself the purchaser.

His son the plaintiff, who now represents him, contends that, under his purchase, he has a right to the quarter of the bungalow which still remained the property of Mr. Gray after his sale of the three-fourths of it in 1853 to Sámi Chetti's father, and this is what the Courts below have held.

It is contended by defendant, the appellant in this second appeal, that plaintiff has only a right of redemption of the quarter share, as the mortgage right to that one quarter had already passed to defendant by the sale of Sámi Chetti's right to the bungalow on the 4th January 1870.

Plaintiff, of course, as representative of the purchaser of Mr. Gray's rights, stands in the place of Mr. Gray, and it is necessary to see what right Mr. Gray had at the date of the purchase in execution of the Rázináma decree.

That decree had remained unexecuted between 1867 and 1871, and it may be doubtful whether execution was not altogether barred, but we are not now called upon to consider that question.

That decree conferred on Sámi Chetti a right to recover the sum decreed, and, if the sums decreed were not paid, gave him a

means of enforcing the decree by sale of the quarter bungalow. PADMANABHA
It gave him no right in the bungalow apart from the enforce-²
ment of the decree. THANAKOTI.

Sámi Chetti's right and interest under the decree in a quarter of the bungalow might have been attached in execution of the decree against him in Original Suit No. 17 of 1869. Had they been so attached and afterwards sold on the 4th January 1870, this would have passed to defendant Sámi Chetti's entire right under the Rázináma decree to be paid the amount decreed, or in default to enforce the remedy allowed by the decree against the land. The right under a decree cannot be severed, so that the remedy against the person can remain in or pass to one man, and the alternative remedy against the property pass to another. The contention therefore must be erroneous that any lien or right against the property could have passed to defendant by the sale in 1870, while the subsequent sale to plaintiff's father in execution of Sámi Chetti's right to enforce the decree conveyed to plaintiff's father merely the right of Mr. Gray to redeem that lien.

Under such a decree the right of the debtor in the property charged remains unaffected, and no interest in it passes to the judgment-creditor prior to enforcement.

As in the present case, there was no enforcement of the decree until that by plaintiff's father as assignee of the decree in 1871, the interest of Mr. Gray then put up to sale transferred to the purchaser, the plaintiff's father (who is now represented by the plaintiff), the entire interest of Mr. Gray in the quarter bungalow.

The decrees of the Courts below are therefore right and this second appeal should be dismissed with costs.
