instituted after the prescribed period shall be dismissed. The language is quite general, and the Act applies to the whole of British India and to all suits instituted therein. It is expressly provided in the Code of Civil Procedure, s. 6, that nothing therein shall affect the jurisdiction or procedure of Village Múnsifs, but no such exception is to be found in the Limitation Act.

It is true that s. 6 of the Limitation Act provides that nothing contained in the Act shall alter or affect a period specially prescribed by any special or local law for any suit, appeal or application, but s. 5, Regulation IV of 1816, can hardly be said to prescribe a period of limitation for any particular suit or class of suits. It simply prohibits a Village Múnsif from taking cognizance of any suit, whatever its nature, unless the cause of action has arisen within twelve years. It would be unreasonable to suppose that, when prescribing different periods of limitation for different suits according to their nature, the Legislature intended to preserve a rule of limitation applicable only to a particular class of tribunals, and which would entirely defeat their object in regard to all suits which might be brought before such tribunals.

We set aside the decree passed by the Village Múnsif, direct him to exercise his jurisdiction and consider the question of limitation, and whether there are any circumstances sufficient under the law to save the claim from limitation.

APPELLATE CIVIL.

Before Mr. Justice Kernan (Officiating Chief Justice), Mr. Justice Hutchins, and Mr. Justice Parker.

KADAR (DEFENDANT NO. 2), APPELLANT,

and

ISMAIL (PLAINTIFF), RESPONDENT.*

1885. September 9. October 20.

Registration Act, s. 50—Registered purchaser—Notice of prior contract to sell.

The words "former part of this section" used in the second paragraph of s. 50 of the Registration Act, 1877, refer to the whole preceding portion of the section:

Held, therefore, that a registered purchaser of land, who bought with notice of a prior unregistered contract by his vendor to convey to the plaintiff, could not resist a suit for specific performance on the plea of registration.

* Second Appeal 221 of 1885.

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THIS was an appeal from the decree of C. Rámachandra Ayyar, Subordinate Judge of Madura (East), confirming the decree of A. Kuppusámi Ayyangár, Acting Additional Múnsif of Madura, in suit 126 of 1884.

The plaintiff, Kaji Shaik Kaji Ismail, sued (1) Husain Bíbí, (2) Kadar Padsha, and (3) Muhammad Ali to obtain a decree cancelling the sale-deed of a house executed by defendants Nos. 1 and 3 to defendant No. 2, and directing defendant No. 1 to execute a conveyance of the said house to plaintiff and for possession thereof.

The plaintiff alleged that, on the 17th May 1883, defendant No. 1 agreed to sell the house to him for Rs. 275, from which sum certain prior debts were to be deducted, and that in breach of such agreement she, jointly with defendant No. 3, fraudulently sold the house to defendant No. 2.

Defendant No. 1 denied the alleged agreement. Defendant No. 2 pleaded that he was not aware of the agreement and that he had obtained a registered sale-deed on the 21st of May 1883 and paid Rs. 250 to his vendors.

Defendant No. 3 was *ex parte*.

The Múnsif found that defendant No. 1 had orally agreed to sell the house to the plaintiff on the 17th or 18th May, that defendant No. 2 had notice of this agreement, that his purchase was not *bonâ fide*, and that plaintiff was entitled to specific performance of the agreement alleged in the plaint with costs against defendant No. 1.

Defendant No. 2 appealed.

On appeal, the Subordinate Judge found that the agreement by defendant No. 1 to sell had been reduced into writing in the form of a receipt (exhibit F) which was as follows :—

"Receipt granted by Husain Bíbí Ammál, widow of Shaik Imam Sahib, living in the East Masi Street, Madura, to Shaik Ismail Sahib of the same place on the 17th May 1883.

"As it has been settled that I should sell you the house belonging to me for Rs. 275, and as I have agreed to sell the same by receiving the balance after deducting from the said amount the sum due to you and to your younger paternal uncle, Kadumiya Sahib, I have received in advance one rupee for my subsistence and three rupees for purchasing stamp paper. For this sum of four rupees you are to hold this as a receipt."

The Subordinate Judge held that, under s. 27, cl. (*b*) of the Specific Relief Act, the plaintiff was entitled to specific performance of this agreement.

Defendant No. 2 appealed.

Bháshyam Ayyangár for appellant.—But for ss. 48 and 50 of the Registration Act, a purchaser with notice would take subject to the prior contract; but this Court has held that the equitable doctrine of notice has been rejected in earlier Registration Acts—*Nallappa* v. *Ibram*,(1) *Madar* v. *Subbaráyalu*,(2) *Muthanna* v. *Alibeg*.(3) By reviewing the history of legislation as to registration, the Court was led to the conclusion that notice was immaterial. The Specific Relief Act, s. 27, does not affect the Registration Act (see s. 4).

(KERNAN, Offg. C.J.—The Registration Act gives the registered document priority. The Specific Relief Act then introduces a new element by which the registered holder with notice is bound: that does not affect the operation of the Registration Act).

The Specific Relief Act was passed first, but the Registration Act came into operation first.

Section 91 of the Trusts Act, which makes a purchaser with notice a trustee in certain cases is similarly limited in its operation, and the Transfer of Property Act also saves the operation of the Registration Act (s. 2, cl. *a*).

Further, s. 50 of the Registration Act refers firstly to documents which take priority if registered, and secondly to all unregistered documents with two exceptions (decree or order) which are postponed to the former. Then from the privileged class of registered documents, certain documents are excepted, viz., those mentioned in cls. (*e*), (*f*), (*g*), (*h*), (*i*) of s. 17 and (*a*), (*b*) of s. 18. If the agreement here, which comes under cl. (*h*) of s. 17 had been registered, it could have gained no priority.

If the words "former part of the section" mean all that precedes, then there is redundancy, for decrees and orders have already been dealt with, and decrees or orders are the documents referred to in cl. (*i*) of s. 17.

But there will be no redundancy if "the former part of this section" is taken to refer to the enacting portion only of the preceding paragraph.

(1) I.L.R., 5 Mad., 73. (2) I.L.R., 6 Mad., 88. (3) I.L.R., 6 Mad., 174.

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The reason for the existence of the second paragraph of s. 50 may be that, if the provisions were included in the first paragraph, the sentence would be too long and complicated.

Hon. *Subramanya Ayyar* for respondent.—The contention is not that a document required to be registered shall operate if unregistered, but that although defendant has a registered document plaintiff is entitled to specific relief. A fraudulent conveyance, though valid between parties, may be invalid against a third party—Transfer of Property Act, s. 53.

A registered document can be impeached on the ground of fraud; why not on the ground of notice?

Section 50 of the Registration Act does not deal with fraud. If the Specific Relief Act intended that relief should not be granted against a registered purchaser, it would have said so.

Former decisions of this Court only deal with rival conveyances. In construing s. 50, there is a difficulty in either case. Former part does not mean half a sentence.

Title by specific performance is acquired by the decree, therefore on getting this decree plaintiff is not affected by the registered conveyance.

The only person protected by s. 53 of the Transfer of Property Act is a *bonâ fide* purchaser.

Bhâshyam Ayyangâr.—Section 53 does not apply; plaintiff is not a prior transferee.

The Court (Kernan, Offg. C.J., Hutchins and Parker, JJ.) delivered the following judgments:—

KERNAN, Offg. C.J.—The facts of this case are sufficiently stated in the judgments of my learned colleagues.

Reading s. 50 of the Registration Act, I am not able to see that there is any ambiguity, patent or latent, in the language used, and we must take the meaning to be that which is plainly expressed thereby, reading it exactly as it is printed.

It is argued that the word "former" mentioned in the second paragraph refers not to the whole of the antecedent sentence, but only to that *portion* of it which mentions the documents that are declared to have priority by registration, that is, as far as the figure 18. My answer to this argument is that the second paragraph refers in express terms to the whole of the former part of the section. The words used are "nothing in the former part of this section, &c.;" the words "portion of" the former part are not used

It is contended that the use of the words "former part" show that a contrast has been drawn by the section between a former part and a latter part (not expressed), and that the former part refers to the documents which have priority by registration, and that the latter part (not expressed but understood) refers to unregistered documents. This is, as it appears to me, a forced construction.

Is not the contrast satisfied by treating the first paragraph, which is a complete sentence, as the "former part" of the section and the second paragraph as the latter part?

Moreover, the construction would seem to be impossible, as the whole of the first paragraph of the section is only one sentence, which must be read in its entirety before the sentence and the meaning of it is complete.

It is sought to make the true reading thus, after 18 insert the words, "not being, cases, &c."

But why should the language of the Act be thus displaced or transposed and new language introduced? It does not appear necessary to do so in order to effectuate any intention of the Legislature apparent from what is the plain meaning of the language used.

It is true that if the words "former part" of this section apply to the whole section, then the documents mentioned in the second paragraph, though not registered, will not have their priority affected by registered deeds. It is contended that this was not the meaning of the Legislature.

The argument, I believe, is that, if all the documents referred to in the second paragraph of the section are omitted, there will be many unregistered documents not affected by registered documents.

I cannot see this is any answer, as the question is what is the meaning of the Legislature expressed by the language they have used. The plain meaning of the section appears to be the words "former part" of this section refer to so much of the section as consists of the one sentence as the first paragraph. The draftsman has adopted this very form of expression "former part of this section" in the proviso to s. 17. Giving the language of the second paragraph its ordinary construction, it means that those documents mentioned in it are to be considered as if the former part of the section had not been enacted.

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The language, "nothing in the former part, &c.," shows that it was intended that these excepted documents were not to be treated as unregistered documents for the purpose of the former part of that section.

The result of the construction contended for by the appellant would be that all the excepted documents, viz., "leases, &c.," mentioned in the second paragraph of s. 50, would be placed under a double disadvantage—

(1) they would not be allowed any priority by registration over unregistered documents, and

(2) they should be registered or they would be postponed to registered documents. Practically these documents would be "compulsorily registrable" in order to save them from registered documents.

In the present case and such like cases there would be the further disadvantage that the plaintiff would have to register his contract, which is excepted under (*h*), and would have to register his conveyance also when he got it.

As the Court is now unanimous in deciding that the defendant's registered conveyance does not take priority of the contract sued on by the plaintiff under the Registration Act, it is clear that s. 4 of the Specific Relief Act does not apply, and that a decree was rightly made for the plaintiff by the lower Courts.

I would dismiss the appeal with costs.

HUTCHINS, J.—The respondent brought this suit to enforce the specific performance of an agreement to sell a house. Defendant No. 1 was the former owner. Defendant No. 2 and appellant is a purchaser, with notice of the agreement in respondent's favor under a registered conveyance. The appellant may or may not have obtained possession: the respondent certainly did not.

In both the Courts below a decree has been passed in the respondent's favor. The Múnsif treated the agreement as an oral agreement, but upheld it upon the authority of *Chunder Nath Roy* v. *Bhoyrub Chunder Surma Roy*.(1) The Subordinate Judge found that it had been reduced to writing in the receipt F, upon which an agreement stamp and penalty have been levied accordingly. He pointed out, in his judgment, that the Calcutta cases [and the same remark applies to the Bombay cases—including

(1) I.L.R., 10 Cal., 250.

Wáman Ramchandrá v. *Dhondibá Krishnáji* (1)] proceed upon the notion that notice of a prior unregistered document prevents the holder of a subsequent conveyance from setting it up, although he may have had it registered, and that is a doctrine which this Court has more than once declined to follow—I.L.R., 5 Mad., 73; 6 Mad., 88; 8 Mad., 167; S.A., 221 of 1885. He held, however, that the agreement F fell under the exceptional cl. (*h*) in s. 17 of the Registration Act, 1877, and was, therefore, exempted from the operation of s. 50 of that Act by its second clause.

Assuming the agreement to be an oral one, it has not been accompanied or followed by delivery of possession, and, under s. 48 of the Registration Act, it must give place to the registered instrument, unless there is anything in the respondent's argument that agreements for sale are to be specifically performed without reference to the Registration Act.

We all consider, however, that the Subordinate Judge was right in holding that the agreement had been reduced to writing. The only object of inserting in the receipt all the terms of the agreement—the settlement of the price and the consequent promise to sell on payment of the balance, deducting two prior charges which the respondent already held on the premises—was to have those terms embodied in a writing. The Subordinate Judge was therefore right in treating the respondent as the holder of an unregistered document, creating a right to obtain a conveyance for a sum exceeding Rs. 100, and falling under cl. (*h*) of s. 17 of the Registration Act.

The next question is whether he was also right in treating this document as wholly exempted from s. 50 of the Act by its second clause. The contention, on the other side, is that this second clause, exempting certain documents from the former part of this section, refers not to the whole of the first clause of the section, but only to the former of the two categories of documents with which the first clause deals. The argument is ingenious and there is certainly much to be said in its favor.

Section 50 of the Act of 1871 consisted simply of one clause and an explanation. The second clause is an interpolation and in drawing it the draftsman may have regarded the old existing clause

(1) I.L.R., 4 Bom., 126.

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as *the section* and have referred to the former part of the clause as the former part of this section. The first clause is even now the only enacting part of the section: the second clause merely contains a proviso or exception. Grammatically "the former part of this section" seems hardly equivalent to "the whole preceding part."

Former and latter are expressions usually applied to distinguish the first and second of two things both mentioned just before. Although the first clause is not divided into two distinct sentences, still it does mention and set in apposition two things, and the words "the former part of this section" would have a reasonable meaning if they are restricted to the former of these two things. There is, first, a class of documents to which priority is given, and next another class which are postponed to the first class. The first class comprises all documents mentioned in cls. (*a*), (*b*), (*c*), (*d*) of s. 17 or in cls. (*a*) and (*b*) of s. 18. Now, if we turn to s. 17, we find that (*b*) and (*c*) are general clauses, which but for a special exemption would include all the documents mentioned in the second clause of s. 50. It seems natural that the same Act, which in s. 17 had said that the cls. (*b*) and (*c*) should not include these exempted documents, should maintain just that very exemption and no other in s. 50. In other words, read as the appellant would read it, the second clause of s. 50 merely repeats the very same qualifications which had been enacted before in s. 17. The very documents which s. 17 declares must be registered are given priority, but certain other documents, which come under the general terms of s. 17, but are exceptionally declared to be optionally registrable, are also excepted from the general words which would have otherwise given them priority.

The second category of documents, viz., those which are postponed to the first class, comprises "*every* unregistered document relating to the same property and not being a decree or order." Now, if the exemption made in the second clause is to apply to this class as well as to the first class of documents, the second class is cut down from a category including every document not duly registered with the solitary exception of a decree or order to one with many exceptions, viz., first, a decree or order expressly excepted in the first paragraph and next those numerous documents exempted by the second paragraph; and one of these exempted documents is itself a decree or order [cl. (*i*)], so that a decree or order is needlessly repeated.

The interpretation for which the appellant contends gives some meaning to the words "the former part of this section" and also to the words, "not being a decree or order" and it also appears to be in harmony with the whole enactment. According to it no document would obtain priority to a decree or order merely by virtue of its registration—the reasonableness of this is obvious enough—but every other unregistered document, except a decree or order, would be liable to be defeated by certain favored documents, the registration of which had been made compulsory under s. 17 or was to be specially encouraged. It seems difficult to conjecture why the holder of a registered conveyance should be allowed to defeat one who has long been in possession under an unregistered conveyance, but not one who has merely obtained an agreement to sell.

It has, however, now been pointed out to me by the learned Chief Justice that the very same words "the former part of this section" occur in the proviso to s. 17, where they certainly refer to all the preceding part of the section. The same meaning should therefore be given to them, if possible, in all parts of the same enactment, and I therefore now agree that the appellant's contention is unsound, and that the view taken by the Subordinate Judge is right. The whole foundation of the appellant's argument therefore fails, and it becomes unnecessary to consider the further question whether, if his registered document gave him priority under s. 50, the Specific Relief Act would take it away. Upon that point I will not now say more than that I cannot agree that the competition would be between the decree, to which, it is assumed, the respondent is entitled, and the appellant's document. It seems to me that the competition must be between the two documents, for the very question before us is whether respondent is entitled to a decree on his contract, or whether that contract has been defeated and made of no effect by the registered conveyance.

PARKER, J.—The suit is to compel specific performance of the agreement of defendant No. 1 to sell plaintiff the plaint house. The agreement was reduced to writing on 17th May 1883 (exhibit F), but the document was not registered. Four days later—on 21st May 1883—defendant No. 1, together with defendant No. 3, executed a deed of sale in favor of defendant No. 2 (exhibit I), which deed was registered. It does not appear

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that defendant No. 2 got possession. On 5th August the plaintiff brought this suit to compel specific performance as regards defendant No. 1, to cancel the sale-deed given by her to defendant No. 2, and for possession of the house.

The District Múnsif found that defendant No. 3 had no title in the house, and that the sale-deed of defendant No. 2, though registered, was not *bonâ fide*. The Subordinate Judge generally concurred in that opinion and both the Courts decreed in plaintiff's favor.

In second appeal it is urged that the Courts below have not followed the decisions in the Presidency with regard to the doctrine of notice; and that under s. 50 of the Registration Act the registered conveyance of defendant No. 2 will take priority over plaintiff's unregistered agreement.

It is not denied that s. 27, cl. (*b*), of the Specific Relief Act gives plaintiff a general right to enforce specific performance as against defendant No. 2, but it is urged that the provisions of the Specific Relief Act are controlled by the operation given to documents by the Registration Act (s. 4, cl. (*c*) of the Specific Relief Act), and that the rulings of this Court in *Nallappa* v. *Ibram* (1) and *Madar* v. *Subbaráyalu* (2) give absolute priority to a subsequent registered deed, notwithstanding notice.

Section 50 of the Registration Act consists of two sentences and an explanation. The second sentence runs as follows: "Nothing in the former part of this section applies to leases exempted under the proviso to s. 17, or to the documents mentioned in cls. (*e*)—(*l*) of the same section." According to the ordinary meaning of language the words "former part of the section" would appear to refer to the first sentence of the section, in which case it would follow that an agreement under s. 17, cl. (*b*) would gain no advantage by being registered, and be under no disability from non-registration. But the learned pleader for the appellant has put forward a very ingenious argument to the effect that the words "former part of this section" do not refer to the whole of the preceding sentence, but to the words "every document of the kind mentioned in cls. (*a*), (*b*), (*c*), (*d*) of s. 17 and cls. (*a*) and (*b*) of s. 18 only. The argument is that this sentence in s. 50 divides documents into two classes, one

(1) I.L.R., 5 Mad., 73. (2) I.L.R., 6 Mad., 88.

privileged, the other unprivileged, and that the effect of the second sentence is to enact that the documents therein mentioned never can gain admission into the privileged class by the fact of registration.

The second clause of s. 50 is, it must be admitted, somewhat awkwardly expressed, but it appears to me the meaning contended for is non-natural. I take the words "former part of this section" as being synonymous with "preceding part" or "first clause of this section" and cannot but regard this as the more natural interpretation. If the Legislature had intended to draw the distinction between the "former" and "latter" class of documents, nothing would have been easier than to say so in express terms.

Independently however of this argument, I am not prepared to admit these two documents, exhibit F and exhibit I, are really brought into competition. Exhibit F does not of itself create any title which will come into competition with the title of defendant No. 2 under exhibit I, but it creates a right to receive from defendant No. 1, or from the Court, a title which will do so. The plaintiff's right to succeed as against defendant No. 2 depends entirely upon his being able to show that he has a right to a decree for specific performance as against defendant No 1. Such decree is a condition precedent, and though defendant No. 2 is joined in the same suit, this is a mere exception to the ordinary rule of pleading that a stranger is not a proper party to a suit for specific performance (*vide* Fry on Specific Performance, ss. 183—185). If the plaintiff can establish no such right, the title of defendant No. 2 is good and valid against all the world; but if he can, it is the decree to that effect against defendant No. 1 (not the unenforced and perhaps unenforceable agreement F), which entitles him to further relief and makes defendant No. 2 *ipso facto* a trustee for plaintiff and bound to re-convey to plaintiff the property which had passed to himself subject to the equity previously created by his vendor—see s. 91, Indian Trusts Act, II of 1882. Section 50 of the Registration Act gives no priority to a registered conveyance over a decree; and as the decree declares defendant No. 2 a trustee bound to re-convey to plaintiff, the prior date of the sale-deed of defendant No. 2 will avail him nothing. In other words I hold that the relief given to plaintiff as against defendant No. 2 is not given upon plaintiff's prior but unregistered contract with defendant No. 1, but upon the contract

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of trust which is by construction of law imposed upon defendant No. 2.

On these grounds, therefore, I would dismiss this second appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Kernan (Officiating Chief Justice) and Mr. Justice Parker.

1885. September 22.

SUBBAYA (PETITIONER),

and

YELLAMMA AND OTHERS (RESPONDENTS).*

Decree—Execution—Invalid sale—Possession given to purchaser—Restitution sought in execution by judgment-debtor—Remedy by suit.

Certain land having been attached in execution of a decree by a District Court, S, the representative of the judgment-debtor, preferred a claim to the land in his own right, which was rejected, and the land was subsequently sold to a stranger, and the sale was confirmed on the 23rd February 1884. On the same date the High Court, on appeal by S, set aside the order rejecting his claim.

The District Court, in ignorance of the order of the High Court, having subsequently put the purchaser in possession of the land, S applied for restitution:

Held, that the order of the District Judge confirming the sale was passed without jurisdiction, but that the District Judge had no power to restore possession to S.

THIS was a petition to the High Court under s. 622 of the Code of Civil Procedure against an order of W. F. Grahame, Acting District Judge of Cuddapah, rejecting an application by Voraganti Subbayya (a minor), representative of the judgment-debtor in suit No. 16 of 1876, to be put in possession of certain land which had been sold in execution of the decree in the said suit.

The facts are fully set out in the judgment of the Court (Kernan, Officiating C.J., and Parker, J.).

Rámachandra Ráu Saheb for petitioner.

Krishnasámi Chetti for respondents.

KERNAN, Offg. C.J.—The plaintiff in suit 16 of 1876 obtained a decree against the defendant in that suit for Rs. 5,617-12-0. The defendant died and his son was made party to the suit, as representative of his father, and then that son died and his son,

* Civil Revision Petition 29 of 1885.