RAMAN NAIR v. VASUDEVAN NAMBOODRIPAD. I

years forfeits the term contracted for by denying the mortgagor's title. On this ground we hold that the suit is premature and it is unnecessary to consider or decide in this case when there was any real disclaimer of the landlord's title by the karnavan and, if so, whether such disclaimer would work a forfeiture against all the members of the tarwad.

We must allow the appeal and reverse the decrees of the Courts below so far as they award redemption but affirm them in so far as they award arrears of purapad due till date of suit, viz., Rupees 17-9-0.

Each party will bear and pay their own costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Bhashyam Ayyangar.

1902. February 23.

SUBRAHMANIA AYYAR (PLAINTIFF), APPELLANT,

v.

POOVAN AND FOUR OTHERS (DEFENDANTS), RESPONDENTS.*

Limitation Act—XV of 1877, s. 28, sched. II, art. 111—Sale of land—Possession retained by vendor—Suit to recover possession seven years thereafter—Non-payment of purchase price pleaded—Vendor's lien not extinguished.

A sale-deed had been executed in plaintiff's favour more than seven years before the present suit, but the purchase money was not paid and the vendors continued in possession of the land. On the present suit being filed for a declaration of plaintiff's right and for the recovery of possession of the land:

Held, that the vendors had a charge, by operation of law, on the property sold, for the purchase money. As the purchaser had not paid the price and had taken no steps to recover possession the vendors were not bound to sue to enforce their lien. Though a suit by the vendors to enforce their lien would have been barred by limitation under article 111 when the present suit was filed, their lien was not extinguished by section 28 of the Limitation Act, and inasmuch as they were still in possession they had a right to retain possession until the purchase money should be paid and the lien be extinguished by such payment.

Unedmal Motiram v. *Dawu Bin Dhondiba*, (I.L.R., 2 Bom., 547), approved.

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* Second Appeal No. 1316 of 1901, presented against the decree of R. D. Broadfoot, District Judge of South Arcot, in Appeal Suit No. 165 of 1900, presented against the decree of T. S. Thiagaraja Ayyar, District Munsif of Tirukkoyilur, in Original Suit No. 753 of 1899.

for a declaration of plaintiff's right to land, and for ssion of it. Plaintiff claimed under a sale-deed, dated 28th 1892, by which he had purchased the land in question, which the ancestral property of first defendant, of fourth defendant's r Munian and of one Kolanthai. The defendants admitted genuineness of the sale-deed, but pleaded that no consideration been paid thereon. They also contended that, if valid, it had executed without family necessity and was in consequence binding on the sons of the executants or on the brothers who not executed it. Defendants Nos. 2 and 3 were sons of first ndant. The sale-deed had been executed by first defendant d his two brothers Munian and Kolanthai. The District Munsif nd that consideration had been paid and that plaintiff was itled to the land and decreed accordingly. The District Judge, appeal, found that the sale-deed was genuine but that no money had been paid. He found that there was no family necessity and that the sale bound only the shares of the executants. He modified the Munsif's decree by declaring that plaintiff was entitled to the shares of the executants, namely, first defendant, Munian and Kolanthai, and that plaintiff should be given possession thereof on s paying the purchase price.

Plaintiff preferred this second appeal.

C. Venkatasubbarama Ayyar for appellant.

P. Nagabhushanam for first and third respondents.

JUDGMENT.—Upon the finding that there was no family necesty, the sale cannot affect the shares of the brothers who have ot joined in the execution of the sale-deed.

The appellant also contends that he is entitled to an absolute ree in respect of the shares of the executants and not to a decree onditional upon his paying the purchase money to the vendors. he finding is that the price for the sale was not paid by the endee to the vendors, and the plaintiff by the suit admits that the endors continue in possession of the property sold, though the sale ad taken place more than seven years before the suit.

We cannot accede to this argument inasmuch as the vendors ave a charge by operation of law upon the property sold for the urchase money. And as the vendee not only did not pay the urchase money, but also did not take steps until this suit to recover ossession from the vendors, the latter were not bound to sue to nforce their lien for the purchase money, the period of limitation

SUBRAHMANIA AYYAR v. POOVAN.

for a suit for the same being under article 111 of the Lim Act only three years from the date of sale.

Notwithstanding that a suit by the vendors for the enforc of their lien would have been barred by limitation at the this suit, section 28 of the Limitation Act would not extin the lien. The lien not having been extinguished and the ve being still in possession, they have a right to retain possessio the purchase money is paid and the lien extinguished by payment. This we find is also the view taken in *Umedmal M.* v. *Davu Bin Dhondiba*(1), and we entirely concur in that de

The second appeal fails and is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyan

1903. February 13.

SOMASUNDARA MUDALY (FIRST DEFENDANT), APPELLAN

v.

DURAISAMI MUDALIAR (PLAINTIFF), RESPONDENT. *

Registration Act—III of 1877, *ss.* 17, 49—*Authority to adopt in writing contained in a will—Document not a testamentary disposition of and not registered—Invalidity—Evidence Act I of* 1872, *s.* 91—*" Admissibility of evidence of authority to adopt.*

In a suit for a declaration that first defendant was not the adopted son plaintiff's deceased brother, the first defendant and his mother relied on authority to adopt which was contained in a document which they contend was a will of the deceased. This document, which had never been and which was the only evidence of the alleged adoption, authorised the to adopt, and further authorised her to put into the possession of the adop son all the properties which the deceased got under a certain decree, and his immoveable properties, etc.:

Held, that the document was not a testamentary disposition of proper within the meaning of section 3 of Act V of 1881. It was an authority to ado and nothing else, and the direction therein to put the adopted son into possessi of the property could not be construed as a devise of the property. It w simply a statement of the consequences that should legally follow on t adoption.

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(1) I.L.R., 2 Bom., 547.

* Appeal No. 83 of 1901 presented against the decree of P. S. Gurumur Subordinate Judge of Kumbakónam, in Original Suit No. 50 of 1899.