

maintainable, as the bond created no charge thereon. The lower appellate Court held that the bond created a charge on that property, referring to *Martin v. Pursram* (1).

1876

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DARSHAN  
SINGH  
?.  
HANWANTA.

On special appeal by the defendants to the High Court it was contended that the bond created no charge upon immoveable property, the case cited by the lower appellate Court being inapplicable, and that the claim against them personally was barred by limitation.

The *Senior Government Pleader* (Lala Juala Parshad) and *Munshi Kashi Parshad*, for the appellants.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji), for the respondent.

The following judgment was delivered by the Court :—

Assuming that the instrument creates a charge on immoveable property, which may be doubted (2), it purports to create an interest over Rs. 100 in value, for it secured the repayment of Rs. 99 *plus* Rs. 6, the interest for three months. This was the least sum that could have been recovered under the instrument. The instrument not having been registered we cannot act upon it. Nor can we decree the debt apart from the lien, for the agreement should have been but was not registered, and more than four years had elapsed prior to suit from the date on which the agreement to repay the money was broken. This claim was therefore barred by limitation. The appeal is decreed, and, the decree of the lower appellate Court being reversed, the decree of the Court of first instance is restored with costs.

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## APPELLATE CIVIL.

1876  
August 11.

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(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Turner.*)

DEBJIT (PLAINTIFF) v. PITAMBAR AND OTHERS (DEFENDANTS).\*

*Mortgage—Uncertain Agreement—Ambiguous or Defective Document—Act IX of 1872 (Contract Act), s. 29—Act I of 1872 (Evidence Act), s. 93.*

*Seemle*, that where certain persons, describing themselves as residents of J, give a bond for the payment of money in which, as collateral security, they charge

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\* Special Appeal, No. 675 of 1876, against a decree of the Judge of Agra, dated the 23rd March, 1876, affirming a decree of the Munsif of Jalesar, dated the 4th January, 1876.

(1) H. C. R., N.-W. P., 1867, p 124

(2) See next case.

1876

"their property" with such payment, they do not thereby create a charge on their immoveable property situated in *J.*

DEOJI  
v.  
PITAMBAR.

*Martin v. Purnam* (1) distinguished.

THE plaintiff in this suit claimed to recover certain money which he alleged was charged upon the immoveable property of the defendants situated in mauza Jarao Bas Mohan by a certain bond. This bond purported to be executed by the defendants, described therein as residents of Jarao Bas Mohan, in favour of the plaintiff, described as resident of Jarao Bas Kesri. The portion of the bond on which the plaintiff relied as creating a charge was as follows:—"and we hypothecate as security for the amount our property with all the rights and interests" (2).

The Court of first instance and the lower appellate Court concurred in holding that the plaintiff had failed to prove the bond. The lower appellate Court further held that the hypothecation in the bond was of too general a nature to admit of a decree being given against any particular property of the defendants.

On special appeal by the plaintiff to the High Court it was contended that the bond created a charge in his favour on the property of the defendants situated in Jarao Bas Mohan.

Munshi *Hanuman Parshad*, for the appellant.

The *Senior Government Pleader* (*Lala Juala Parshad*) and *Lala Lalta Parshad*, for the respondents.

The following judgment was delivered by the Court:—

This case differs widely from the one to which reference has been made (3). If the debtors had described themselves as the owners of certain property and then gone on to pledge their rights and interests, it would have been reasonable to refer the indefinite expression to the description. In this case the debtors simply describe themselves as residents in a place and pledge "*kul haq haquk*." This case falls within the principle of the decision (4) that a general hypothecation is too indefinite to be acted upon. Under

(1) H. C. R., N.-W. P., 1867, p. 124.

(2) The original words are "*hakikat apne kul haq haquk*."

(3) *Martin v. Purnam*, II. C. R., N.-W. P., 1867, p. 124.

(4) See e. g., *Ram Luksh v. Sookh Deo*, H. C. R. N.-W. P., 1869, p. 65.

the Contract Act, s. 29, an agreement is void if its meaning is not certain or capable of being made certain, and under s. 93 of the Evidence Act, where the language of a deed is, on its face, ambiguous or defective, no evidence can be given to make it certain. The Courts below have, however, found that the deed was not proved, and by this finding we are bound. Our observations on the other issue are intended to impress upon money-lenders that distinctness in the description of property mortgaged is essential. The appeal fails and is dismissed with costs.

1876

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 DEOJIE  
v.  
PITAMBAR.
 

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 APPELLATE CIVIL.
 

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 1876  
August 16.
 

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(*Mr. Justice Spankie and Mr. Justice Oldfield.*)

NARAIN SINGH (DEFENDANT) v. MUHAMMAD FARUK (PLAINTIFF).\*

*Act XXIII of 1861, s. 14—Pattidari Estate—Pre-emption—Act XVIII of 1873, s. 177—Act XIX of 1873, s. 188.*

The provisions of s. 14, Act XXIII of 1861, are not applicable, where the land is sold in execution of a decree of a Revenue Court.

*Held*, on the assumption that, where land is sold in execution of such a decree, a claim to the right of pre-emption can be preferred under the provisions of s. 177 of Act XVIII of 1873 and s. 188, Act XIX of 1873, that such claim can only be preferred where the land is a patti of a mahál, not where it is part only of a patti of a mahál.

*Semle* that, where land which is a patti of a mahál is sold in execution of such a decree, a claim to the right of pre-emption can be preferred under the provisions of s. 177, Act XVIII of 1873, and s. 188, Act XIX of 1873.

THIS was a suit to establish the plaintiff's right to certain land forming portion of a patti of a pattidari mahál. The suit was based upon the provisions of s. 14, Act XXIII of 1861. The land was sold to the defendant on the 20th August, 1874, in execution of a decree of a Revenue Court made in a suit under cl. 2, s. 1, Act XIV of 1863. The plaintiff preferred a claim to take the land at the price it was knocked down to the defendant, under the provi-

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\* Special Appeal, No. 666 of 1876, from a decree of the Judge of Azamgarh, dated the 16th March, 1876, reversing a decree of the Munsif of Nagra, dated the 6th December, 1875.