

1876

FARZAND ALI
v.
ALIMULLAH.

who come under the denomination of members of the co-parcenary. But the plaintiff can, however, only obtain a declaration that the defendant has no right of pre-emption as against him, and that the sale to the defendant is invalid, but he cannot obtain possession until the sale has been confirmed in his favour and made absolute. He has taken no steps to effect this by moving the Court which ordered the sale to confirm it in his favour, which is the proper remedy open to him. I would modify the decree of the lower appellate Court by declaring that the defendant has no right of pre-emption as against plaintiff, and that the sale to the defendant is invalid.

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APPELLATE CIVIL.

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

DARSHAN SINGH AND OTHERS (DEFENDANTS) v. HANWANTA (PLAINTIFF).*

Act VIII of 1871 (Registration Act), s. 17, cl. (2)—Registration—Mortgage.

A bond which charged immoveable property with the payment on a day specified therein of Rs. 99, the principal amount, and Rs. 6, interest thereon, should have been registered under the provisions of cl. (2), s. 17, Act VIII of 1871 (1).

THE plaintiff in this suit claimed to recover the amount of a bond dated the 21st March, 1871, from the defendants personally and by the sale of their property situated in mauza Gutla, which he alleged was charged in the bond with the payment of the amount. The defendants, described in the bond, which was unregistered, as residents of mauza Gutla, bound themselves to pay the plaintiff described as a resident of the same mauza, on the 5th June, 1871, the sum of Rs. 99, together with interest thereon at 2 per cent. per mensem, and with such payment they charged "their house and landed property." The suit was instituted on the 15th September, 1875.

The Court of first instance held that the plaintiff's claim against the defendants personally was barred by limitation, and that his claim against their property situated in mauza Gutla was not

* Special Appeal, No. 674 of 1876, from a decree of the Judge of Agra, dated the 18th March, 1876, reversing a decree of the Munsif, dated the 27th November, 1875.

(1) So held in *Dhurmdoo Narain Singh v. Nund Lall Singh*, H. C. R., Act XX of 1866. N.-W. P., 1874 ; p. 257, with reference

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).

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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.

APPELLATE CIVIL.

1876
August 11.

(*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

* 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.