

Before Mr. Justice Pearson and Mr. Justice Spankie.

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GOBAR DHAN DAS (DEPENDANT) v. GOKAL DAS (PLAINTIFF).*

Pure Conditional Mortgage—Regulation XVII of 1806.

K made over to G, from whom he had borrowed certain moneys, certain land on the oral condition that, if such moneys were not repaid within two or three months, such land should become G's absolutely. Held that as there was no deed of conditional mortgage the provisions of Regulation XVII of 1806 were not applicable to G, and he became the owner of such land after the expiry of three months from the date on which it was made over to him, in consequence of the amount of the loan not having been repaid to him.

ON the 11th February, 1862, one Kishen Das purchased certain premises used as a stable, the vendor executing a deed of sale in his favour. In the beginning of 1869 Kishen Das, being indebted to one Gokal Das in the sum of Rs. 1,000, gave possession of the premises to Gokal Das and made over to him the deed of sale, on the oral understanding that if the debt were not paid in two or three months the premises should become the absolute property of Gokal Das. In July, 1869, Kishen Das became insolvent, and in the schedule of immoveable property filed by him in the Insolvent Court at Calcutta he stated as follows:—"I received the sum of Rs. 1,000 in the month of Phagun, Sambat 1925, as a loan from Gokal Das, Gujrati, and for the repayment thereof deposited the title-deeds of a piece of land at Muttra, in the North-Western Provinces, with this creditor, and I also agreed that in case I was not able to pay the amount the land would absolutely belong to him." In the statement of his immoveable property filed in the same Court he stated:—"A piece of land at Muttra, in the North-Western Provinces, mortgaged to my creditor No. 34 (Gokal Das) for Rs. 1,000 on condition that in case I am not able to pay the amount within two or three months he will be absolutely entitled to the land." Gokal Das remained in undisturbed possession of the premises until the 10th February, 1877, when Jagan Nath, the son of Kishen Das, executed a deed of sale of the premises in favour of Gobar Dhan Das, who thereupon interfered and prevented Gokal Das' tenant from paying rent to him as he had theretofore done. Gokal Das thereupon instituted the present suit in which

* Second Appeal, No. 714 of 1879, from a decree of J. Alone, Esq., Subordinate Judge of Agra, dated the 20th March, 1879, affirming a decree of Maulvi Mubarak-ulla, Munsif of Muttra, dated the 3rd December, 1878.

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he claimed, amongst other things, a declaration of his proprietary right to the premises, and to be maintained in possession thereof, and the cancellation of the deed of sale dated the 10th February, 1877. The Court of first instance gave him a decree. On appeal the lower appellate Court held, in respect of the contention by the defendants that the possession of the plaintiff of the premises was only that of an equitable mortgagee, and that consequently he could not impugn the sale to Gobar Dhan Das by Jagan Nath, as follows:—"In the case of *Goordyal v. Hunscoonwer* (1) the High Court said,—'It has been settled that a conditional sale may by the agreement and acts of the parties become absolute without (foreclosure) proceedings under the Regulation,'—and this appears to me to be the case here: I accordingly find that Gokal Das acquired the proprietary title to the property in suit in 1869, and that he has therefore the right to sue for the avoidance of the sale made by Jagan Nath to Gobar Dhan Das."

The defendant Gobar Dhan Das appealed to the High Court contending that the lower appellate Court had erred in holding that the conditional sale to the plaintiff did and could become absolute without the issue of the notice of foreclosure required by s. 6 of Regulation XVII of 1806, and that the plaintiff was still only a mortgagee and could not therefore sue for the proprietary possession of the property.

Mr. Conlan and Babu Ratan Chand, for the appellant.

Mr. Howard and Lala Harkishen Das, for the respondent.

The judgment of the High Court (PEARSON, J. and SPANKIE, J.) was delivered by

PEARSON, J.—The provisions of Regulation XVII of 1806, to which the first ground of appeal refers, are only applicable to the holders of deeds of conditional mortgage. The plaintiff, appellant, was not the holder of such a deed; and the provisions of the Regulation aforesaid were not therefore applicable to him. This being so, we must hold that according to the condition on which the property was made over to him he became the owner of it after

(1) H. C. R., N.-W. P., 1867, p. 176.

the expiry of three months from the date on which it was made over to him, in consequence of the amount of the loan not having been repaid to him. It thus appears that he had acquired a full proprietary right and title to the property before Kishen Das' insolvency. Accordingly we affirm the decrees of the lower Courts and dismiss the appeal with costs.

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Appeal dismissed.

Before Mr. Justice Pearson and Mr. Justice Spankie.

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GANGA BISHESHAR (DEFENDANT) v. PIRTHI PAL (PLAINTIFF)*

Hindu Law—Power of the Father to alienate ancestral property.

D, in pursuance of a promise to give his daughter a dowry, about two years after her marriage, made a gift of joint ancestral property to *G*, her father-in-law. *P*, *D*'s son, sued his father and *G* to have the gift set aside as invalid under Hindu law. *Held* that the gift, not having been made with the plaintiff's consent, and not being for any purpose allowed by Hindu law, was invalid, and that the plaintiff was entitled to have it set aside, not to the extent only of his own share in such property, but altogether.

ON the 25th April, 1872, about two years after the marriage of his daughter, one Debi Prasad executed a deed of gift of a certain share in a certain village, being the ancestral property of his family, in the favour of the defendant Ganga Bisheshar, the father-in-law of his daughter. The property purported to be transferred as the marriage portion of the daughter. In July, 1878, Pirthi Pal, the plaintiff, the son of Debi Prasad, sued his father and the defendant Ganga Bisheshar to have this deed of gift cancelled, on the ground that the alienation was invalid under Hindu law. The defendant Ganga Bisheshar set up as a defence to the suit, amongst other things, "that the deed of gift had been executed not only with the consent and knowledge of the plaintiff, but also with his aid, and the defendant had obtained possession by means of mutation of names, to which the plaintiff never took any exception," and that the plaintiff was not entitled to claim the cancellation of deed of gift in respect of the whole property, but in respect only of his own share. The Court of first instance determined that

* Second Appeal, No. 706 of 1879, from a decree of R. G. Currie, Esq., Judge of Gorakhpur, dated the 17th March 1879, affirming a decree of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 24th December, 1878.