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AMME
RAHAM
v.
ZIA AHMAD.

concurrence of my brother Tyrrell. The answer to this reference is that art. 127 of the present Limitation Act, XV of 1877, does not govern such actions as the one represented by the plaint in this case. I therefore agree in the order made.

KNOX, J.—I agree in the answers proposed.

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December 22.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Tyrrell, Mr. Justice Mahmood and Mr. Justice Knox.

JAGRUP RAI AND OTHERS (DEFENDANTS) v. RADHEY SINGH AND OTHERS (PLAINTIFFS.)

Registered and unregistered documents—Priority—Mortgagee under registered deed competing with auction-purchaser at a sale under a decree on a prior unregistered mortgage-deed—Act III of 1877 (Registration Act) s. 50.

Under s. 50 of the Registration Act the decree or order which is not to be effected by a registered document must be a decree or order made prior to the execution and registration of the registered document. Therefore where the plaintiffs, who were mortgagees under a registered instrument, sued to set aside a sale to the defendants under a decree on an unregistered mortgage, the plaintiffs' registered mortgage being subsequent to the unregistered mortgage on which the defendants relied, but prior to the decree thereon—*held* that the defendants, auction-purchasers, must take subject to the rights of the plaintiffs as mortgagees. *The Himalaya Bank Limited v. The Simla Bank Limited* (1), *Madar Sahib v. Subbarayalu Nayudu* (2), *Kanhaya Lal v. Bansidhar* (3) and *Shahi Ram v. Shih Lal* (4) referred to.

THE facts of this case sufficiently appear from the judgment of Edge, C. J.

Mr. *Abdul Majid* and Mr. *Hamid-ullah*, for the appellants.

Munshi *Jwala Prasad*, for the respondents.

EDGE, C. J.—The plaintiffs were appellants here. They brought their suit to have it declared that a decree obtained on the 12th September 1882, on an unregistered bond of the 31st January 1877, and the auction-sale held under that decree at which the defendants purchased were null and void. The plaintiffs were mortgagees of the property. Their mortgage was dated the 5th December 1877, and was registered. On that mortgage they obtained a decree on the

(1) I. L. R., 8 All., 23.

(2) I. L. R., 6 Mad., 88.

(3) Weekly Notes, 1884, p. 136.

(4) Weekly Notes, 1885, p. 63.

19th December 1882. The question turns on s. 50 of the Registration Act. Now in this case the unregistered mortgage which was the basis of the defendants' title was prior in date to the plaintiffs' registered mortgage, but the plaintiffs' registered mortgage was prior in date to the making of the decree on the unregistered mortgage.

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It appears to me that under s. 50 of the Registration Act the decree or order which is not to be affected by a registered document must be a decree or order made prior to the execution and registration of the registered document. The question was considered by this Court in *The Himalaya Bank, Limited, v. The Simla Bank, Limited*, (1), and it appears to me that I have come to the same conclusion as the learned Chief Justice and my brother Tyrrell did in that case with respect to the question of priorities. We cannot grant the relief asked for by the plaintiffs. The decree under which the sale took place was a perfectly good decree, the only thing is that it does not affect the plaintiffs' right to have it declared that it was subject to their lien. The decree that I shall propose will be that the appeal be decreed with costs and the suit of the plaintiffs' decreed to this extent that it be declared that the decree of the 12th September 1882, and the sale thereunder of the 12th March 1887 did not affect the rights of the plaintiffs under their registered mortgage of the 5th December 1877, and the decree thereon of the 19th December 1882.

STRAIGHT, J.—I am of the same opinion. I think that the law is very clearly stated on this point in the judgment of *Shahi Ram v. Shib Lal* (2) decided by Mr. Justice Oldfield and my brother Mahmood, and referred to in *The Himalaya Bank, Limited, v. The Simla Bank, Limited*, and the view therein held entirely coincides with the view just now expressed by the learned Chief Justice, and is also in accordance with the view I myself expressed in the case of *Kanhaiya Lal v. Bansidhar* (3). A like view is taken by the Madras Court in *Madar Saheb v. Subbarayalu Nayudu* (4). I also agree

(1) I. L. R., 8 All., 23.

(3) Weekly Notes, 1884, page 136.

(2) Weekly Notes, 1885, page 63.

(4) I. L. R., 6 Mad., 88.

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in the order proposed by the learned Chief Justice and the form which the decree should take.

TYRRELL, J.—I also concur.

MAHMOOD, J.—I am also of the same opinion, and only wish to say that in the case of *Shahi Ram Shib v. Lal* (1) I had the honor of considering this question with Mr. Justice Oldfield, and the views which were then expressed were approved, as my brother Straight has pointed out, by Petheram, C. J., and my brother Tyrrell in the case of the *Himalaya Bank, Limited, v. The Simla Bank, Limited*, (2). Indeed, at page 28 a passage from that judgment is quoted which is of importance in this matter; and I give my concurrence all the more willingly, because now a Bench consisting of the whole of this Court as now constituted has approved it.

KNOX, J.—I agree with the learned Chief Justice.

Appeal decreed.

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 December 11.

APPELLATE CIVIL.

Before Mr. Justice Mahmood.

BISHEN DAYAL (JUDGMENT-DEBTOR) v. THE BANK OF UPPER INDIA,
 LIMITED, (DEBTEE-HOLDER). *

Execution of decree—Party improperly brought on the record as representative of deceased judgment-debtor—Appeal—Costs—Civil Procedure Code, ss. 2, 244, cl. (c). 540.

One B. D. was made a party to an application for execution of a decree as one of the representatives of a deceased judgment-debtor. It had been decided in a previous suit that B. D. was not related to the judgment-debtor in such a manner that he could become his legal representative, and in this proceeding also he objected that he was not such representative, and his objection was allowed and the order allowing it remained unappealed and became final. The Court, however, while allowing the objection, did not give the objector his costs.

Held that the objector did not, by being improperly brought into the execution proceedings, lose his right of appeal, and further, that he could under the circumstances appeal on the question of costs alone.

* First appeal No. 196 of 1889 from a decree of G. J. Nicholls, Esq., District Judge of Cawnpore, dated the 24th August 1889.

(1) Weekly Notes, 1885, page 63. (2) I. L. R., 8 All. 23.