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this liability be taken to be one arising under a covenant implied by law as incidental to the mortgage contract, which was in writing and registered, then article 116 of the Limitation Act would apply, otherwise the appropriate article is 120, the case not being otherwise provided for." The Bombay ruling was distinguished on the ground that when it was decided the Transfer of Property Act was not in force in Bombay. Whether that would be sufficient for distinguishing the Bombay case in the present appeal we are not prepared to say. The facts of this case are on all fours with a case decided by this Court—*Hamid-ud-din v. Kedar Nath* (1). That case is against the appellant. It is true that in that case the special plea raised by the appellant was not considered. But we think that a personal covenant to pay, although not expressed, is implied in and is an essential part of every simple mortgage. The respondent's right to a decree under section 90 therefore was a part of and arose out of a contract in writing and registered, and we think that he is entitled to the benefit of article 116. The result is that this appeal fails and is dismissed with costs.

Appeal dismissed.

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May 25.

Before Mr. Justice Aikman and Mr. Justice Griffin.

RANJIT SINGH (DEBTEE-HOLDER) v. BALDEO SINGH AND ANOTHER

(JUDGMENT-DEBTORS).*

Civil Procedure Code, section 318—Act No. XV of 1877 (Indian Limitation Act), schedule II, article 178—Execution of decrees—Limitation—Terminus a quo.

Although the grant of a certificate is a necessary preliminary to an application under section 318 of the Code of Civil Procedure, such application will be barred under article 178 of the second schedule to the Indian Limitation Act, 1877, if not made within three years of the date of the certificate, that is to say, the date of the confirmation of sale. *Basapa v. Marya* (2) and *Kashinath Trimbal Joshi v. Duming Zuran* (3) dissented from. *Petition of Kishan Singh* (4) referred to.

In this case one Ranjit Singh, on the 20th of November 1897, purchased certain immovable property in execution of a decree

* Second Appeal No. 985 of 1907 from a decree of H. W. Lyle, District Judge of Agra, dated the 8th of June 1907, reversing a decree of Chajju Mal, Subordinate Judge of Agra, dated the 2nd of February 1907.

(1) (1898) I. L. R., 20 All., 385. (3) (1892) I. L. R., 17 Bom., 228.
(2) (1879) I. L. R., 3 Bom., 433. (4) Weekly Notes, 1883, p. 282.

obtained by him against Baldeo Singh and another and the sale was confirmed on the 5th of January 1898. The auction purchaser took no steps to obtain a sale certificate until the 15th of September 1905, and a certificate was granted to him on the 21st of March 1906. On the 3rd of January 1907 he applied under section 318 of the Code of Civil Procedure to be put in possession of the property which he had bought in 1897. The judgment-debtor objected that the application was barred by limitation. This objection was overruled by the Court of first instance (Subordinate Judge of Agra) but on appeal was sustained by the learned District Judge. The auction purchaser appealed to the High Court.

Munshi *Govind Prasad*, for the appellant.

The Hon'ble Pandit *Sundar Lal*, for the respondents.

AIKMAN and GRIFFIN, JJ.—The appellant, on the 20th of November 1897, purchased certain immovable property in execution of his own decree, and the sale was confirmed on the 5th of January 1898. The appellant took no steps to obtain a sale certificate until the 15th of September 1905, and a certificate was granted to him on the 21st of March 1906. On the 3rd of January 1907, he applied under section 318 of the Code of Civil Procedure to be put in possession of the property which he had bought in 1897. The judgment-debtor objected that the application was barred by limitation. This objection was overruled by the Court of first instance, but on appeal was sustained by the learned District Judge. The auction purchaser comes here in second appeal. The only plea argued before us was that the application was not barred. In support of this contention reliance is placed on the decisions of the Bombay High Court in *Basapa v. Marya* (1) and in *Kashinath Trimbak Joshi v. Duming Zuran* (2). These decisions undoubtedly support the contention of the appellants; but, with all deference to the learned Judges who decided them, we do not find ourselves in agreement with them. We concur with what was said by the dissenting Judge, Kemball, J., in the earlier of the two cases. It is no doubt true that, according to the language of section 318 of the Code, an application under that section cannot be made

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until a certificate has been granted under section 316. But section 316 provides that the certificate is to bear, not the date on which it is actually issued, but the date of the confirmation of sale, and in our judgment the certificate must be deemed to have been granted on the date which it bears, just as a decree is deemed to have been passed, not on the date on which it is signed, but on the date on which the judgment was pronounced. We are of opinion that, although the grant of a certificate is a necessary preliminary to an application under section 318, such application will be barred under article 178 of the second schedule to the Limitation Act, if not made within three years of the date on which the certificate is granted, which we take to mean the date it bears, that is, the date of the confirmation of sale. If the auction purchaser delays for upwards of three years in asking for the certificate to which he is entitled he does so at his own risk. It has been held by this Court—see *Petition of Kishen Singh* (1)—that there is no limitation for an application for a sale certificate. If we take it that his right to apply under section 318 arises, not from the date which the certificate bears, but from the date on which it happens to be issued, an auction purchaser might come in with an application under section 318 twenty years after the date when title to the property vested in him. The view which we take now is supported by an unreported decision of our brother Richards in Execution Second Appeal No. 1401 of 1907, decided on the 12th of this month. For the reasons given above we are of opinion that, whatever other right the appellant may have to enforce his title to the property which he bought, the Court below was correct in holding that his application under section 318 is barred. The result is that we dismiss the appeal with costs.

Appeal dismissed.

(1) Weekly Notes., 1883, p. 262.