

1913

KASTURI
v.
CHIBANJI
LAL.

that it would be proper to apply the principle of *factum valet* to a marriage effected without such consent, but also without either force or fraud. In the present case the girl was sixteen years old at the time of the marriage: she appears to have entered upon it not unwillingly, and the object which her paternal relatives had in view in opposing her marriage with the respondent, and now have in view in resisting this suit, is the getting of a sum of money upon what would be something very like a sale of the girl to the one-eyed man Tulshi. It seems to us that this is eminently a case to which the principle of *factum valet* should be applied. We therefore hold that the marriage cannot now be declared void. The appeal fails and is dismissed with costs.

Appeal dismissed.

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February, 26.

Before Mr. Justice Banerji and Mr. Justice Tudball.

INDARJIT AND OTHERS (DEFENDANTS) v. GAJADHAR SAHAI (PLAINTIFF)
AND DEANPAT RAI AND OTHERS (DEFENDANTS)*

Act No. IX of 1871 (*Indian Limitation Act*), section 21—Act No. IX of 1908 (*Indian Limitation Act*), section 31—Limitation—Mortgage with possession—Realization of rents and profits equivalent to receipt of interest as such under the terms of the mortgage.

Under the terms of a mortgage deed executed in 1850 the mortgagee was to take possession of the mortgaged property and appropriate the rents and profits in lieu of interest. The mortgagee remained in possession up to 1889 when he was dispossessed. In 1910 he brought a suit for sale. *Held*, that the realization of rents and profits in lieu of interest was equivalent to the receipt of interest as such under the terms of the mortgage and therefore under section 21 of Act No. IX of 1871 the mortgagee was entitled to compute limitation from the year 1889. Act No. XV of 1877 having by that time come into operation, the plaintiff was in 1910 entitled to bring his suit within the limitation provided by section 31 of Act No. IX of 1908.

THIS was a suit for sale upon a mortgage executed in 1850. The mortgage was usufructuary, the rents and profits being taken in lieu of interest on the mortgage money. The plaintiff remained in possession and realized the rents and profits down to the year 1889, when he was dispossessed. The present suit was brought in 1910. Both the lower courts decreed the claim. The defendants mortgagors appealed to the High Court, and the only point raised in appeal was that the suit was barred by limitation before Act

* Second Appeal No. 572 of 1912 from a decree of H. Dupernex, District Judge of Farrukhabad, dated the 3rd of February, 1912, confirming a decree of Joti Sarup, Munsif of Kaimganj, dated the 5th of December, 1910.

No. XV of 1877 came into force, and therefore the plaintiff was not entitled to the benefit of section 31 of Act No. IX of 1908.

Babu *Jogindro Nath Chaudhri*, for the appellants.

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

BANERJI and TUDBALL, JJ.:—This appeal arises out of a suit for sale upon a mortgage of the 26th of January, 1850. The question to be decided is whether the suit is barred by limitation. The mortgage deed provided that the mortgagee was to take possession and appropriate the rents and profits in lieu of interest. It has been found by the court below that in pursuance of this clause in the mortgage deed the mortgagee was in possession till the year 1889, when he was dispossessed. It is argued that the claim had become time-barred before Act XV of 1877 came into operation, and, therefore, the plaintiff was not entitled to the benefit of section 31 of the Limitation Act of 1908. Section 21 of Act IX of 1871 gave a fresh start for the computation of limitation from the date of payment of interest as such. The realization of rents and profits in lieu of interest was equivalent to the receipt of interest as such under the terms of the mortgage and, therefore, under section 21 of Act IX of 1871, the plaintiff was entitled to compute limitation from the year 1889, up to which year he has been found to have received interest. Before that date Act XV of 1877 had come into operation. Therefore in accordance with the provisions of section 31 of Act IX of 1908 the plaintiff was entitled to bring his suit within two years of the date on which that Act came into force. The suit having been brought on the 10th January, 1910, was well within time. The only point raised therefore fails. We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamier.

DHANPAL SINGH (PLAINTIFF) v. BUDH SINGH AND ANOTHER (DEFENDANTS)*
Act No. XVI of 1908 (Indian Registration Act), section 50—Registered and unregistered documents—Priority—Effect on rights of prior unregistered mortgagee of sale in execution of a decree on a subsequent registered mortgage.

When property is sold in execution of a decree on a subsequent registered mortgage taking priority over a prior unregistered mortgage such sale does not have the effect of invalidating the prior mortgage or of extinguishing altogether

* Second Appeal No. 637 of 1912 from a decree of H. W. Lyle, District Judge of Agra, dated the 22nd of February, 1912, reversing a decree of Mubarak Husain, Subordinate Judge of Agra, dated the 18th of July, 1911.

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INDARJIT
v.
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February, 27.