

1881

KHAIR-UN-  
NISSA  
v.  
GAURI  
SHANKAR.

on 7th September, 1875, the decree-holder-respondent is barred from executing his decree. I would accordingly decree the appeal with costs.

OLDFIELD, J.—I am of opinion that the present application of the 16th May, 1879, on the part of the decree-holder to execute the decree is barred under art. 179, sch. ii of the Limitation Law. I concur with Mr. Justice Straight in holding that it cannot be considered to be a continuation of the application of the 7th September, 1875, but is a fresh application, and I do not consider that the intermediate application made by the decree-holder on the 16th February, 1877, is such an application as is contemplated in art. 179, so as to allow the period to run from its date. I therefore on this ground concur in the proposed order.

*Appeal allowed.*

1881

January 14.

*Before Mr. Justice Spankie and Mr. Justice Oldfield.*

CHATTAR SINGH (PLAINTIFF) v. RAM LAL AND ANOTHER (DEFENDANTS)\*

*Registered and unregistered Documents—Act XIX of 1843—Act VIII of 1873 (Registration Act)—Act III of 1877 (Registration Act), s. 50.*

A document executed while Act XIX of 1843 was in force and not registered thereunder cannot be postponed to a document executed in 1873 and registered under Act VIII of 1871.

THIS was a suit in which the plaintiff claimed possession of a certain share in a village called Bannapur. This share had been hypothecated to the plaintiff as collateral security for the payment of two bonds dated the 9th January, 1873, and the 31st December, 1873, respectively, which had been given to him by Sham Lal the brother of the defendants. The plaintiff obtained a decree on these bonds enforcing the hypothecation on the 27th March, 1876. In 1878 the share was put up for sale in execution of this decree and was purchased by the plaintiff, the certificate of sale granted to him bearing date the 23rd December, 1878. When the plaintiff endeavoured to obtain possession of the share he was resisted by the defendants. They claimed by virtue of a lease which had been

\* Second Appeal, No. 774 of 1880, from a decree of R. G. Currie, Esq., Judge of Aligarh, dated the 20th April, 1880, modifying a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 13th February, 1880.

granted to them by their brother Sham Lal, bearing date the 1st January, 1876; and also as auction-purchasers of the share at a sale which took place on the 20th December, 1878, in execution of a decree dated the 19th May, 1876, which they had obtained against their brother on a bond in which the share was hypothecated dated the 1st February, 1862. The plaintiff consequently brought the present suit against the defendants for possession of the share, and the cancelment of the sale at which the defendants had purchased, and of the lease, alleging that the lease and the bond of the 1st February, 1862, were both fraudulent instruments. The plaintiff's bonds of the 9th January and 31st December, 1873, were registered instruments, while the defendants' bond of the 1st February, 1862, was not registered. The question arose in the case whether or not the latter bond being unregistered should take effect as regards the share against the plaintiff's registered bonds. Both the lower Courts held that that bond should take effect as regards the share as against the plaintiff's registered bonds, notwithstanding it was not registered. Upon this point the lower appellate Court observed as follows: "Then as to the legal plea: if I had been left to myself to put an interpretation on the subject, I should have given it for the plaintiff, against the Subordinate Judge's decision, and have held that it was immaterial that the second bond (or bonds) was registered under a subsequent Registration Act by which the registration thereof was compulsory, inasmuch as Act XIX of 1843 distinctly laid down that a registered bond should have preference to an unregistered one, even though it be of an earlier date and authentic: but an exactly applicable precedent, in a precisely similar case, has been pointed out to me in the case of *Khandu Dubladas v. Turachand Amarchand* (1), which takes the other view, and by which, specially as it agrees with the finding of the Subordinate Judge, I consider I must be guided, when no other precedent whatever even partially applicable has been shown by the pleader of the appellant taking the other (my) view." On second appeal by the plaintiff it was contended on his behalf that his bonds being registered should take effect as regards the property in suit as against the unregistered bond of the defendants.

Pandit *Ajudhia Nath* and Munshi *Sukh Ram*, for the appellant.

(1) I. L. R., 1 Bom. 574.

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CHATTAR  
SINGH  
v.  
RAM LAL

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HATTAR  
SINGH  
v.  
AN LAL.

Mr. *Howell* and Babu *Oprokash Chandar Mukarji*, for the respondents.

The Court (SPANKIE, J., and OLDFIELD, J.,) remanded the case to the lower appellate Court for the trial of certain issues set out in the order of remand, the portion of the order of remand material to the contention above set out being as follows :—

SPANKIE, J.—The Full Bench judgment of this Court in *Chuterdharee Misser v. Nursingh Dutt Sookool* (1) ruled that a deed creating an interest in immoveable property exceeding in value Rs. 100, executed prior to the 1st January, 1865, is not affected by Act XVI of 1864, s. 13, although it may be registered under s. 17. All former Acts and Regulations having been repealed except in respect of registered instruments, an unregistered deed creating an interest in immoveable property exceeding in value Rs. 100, executed prior to the 1st January, 1865, is not by any provision of Act XVI of 1864 postponed to a registered instrument executed subsequently to that date. We think that the ruling is strictly applicable to the present case, and that an unregistered document executed when the Act of 1843 was in force cannot be postponed to a registered document executed in 1873. Therefore the first plea fails.

### PRIVY COUNCIL.

P. C.\*  
1881  
January 27.

MUHAMMAD FAIZ AHMAD KHAN (DEFENDANT) v. GHULAM AHMAD KHAN AND ANOTHER (PLAINTIFFS).

[On appeal from the High Court of the North-Western Provinces at Allahabad.]

*Muhammadian law—Construction of instrument of gift.*

One of two brothers, co-sharers in ancestral lands, died leaving a widow, who thereupon became entitled to one-fourth of her husband's share of the family inheritance. Without relinquishing her right to claim her share, in lieu thereof she received an allowance of cash and grain. The surviving brother made an arrangement with her which was carried into effect by documents. By one instrument he granted two villages to her. By another she accepted the gift, giving up her claim to any part of the ancestral estate of her husband. The first instrument, *inter alia*, stated as follows :—“I declare and record that the aforesaid sister-

*Present* :—SIR B. PEACOCK, SIR M. E. SMITH, SIR R. P. COLLIER, and SIR B. COUCH.

(1) N.-W. P. H. C. Rep., 1868, p. 371.