

APPELLATE CIVIL.

Before Mr. Justice Le Rossignol and Mr. Justice Pfordde.

PUNJAB BANKING CO., LTD., LAHORE

(PLAINTIFF) Appellant,

versus

MUHAMMAD HASSAN KHAN AND OTHERS

(DEFENDANTS) Respondents.

Civil Appeal No. 339 of 1923.

Punjab Alienation of Land Act, XIII of 1900, section 6—Mortgage by member of an agricultural tribe in favour of a non-agriculturist—Compromise in Court—Registration—Certificate of Registrar—prima facie proof of—Neglect to search registers for encumbrances—Specific Relief Act, I of 1877, section 27 (b).

Held, that a mortgage by a member of an agricultural tribe in favour of a non-agriculturist, if made in one of the forms prescribed by section 6 of the Punjab Alienation of Land Act, is valid.

Held also, that a compromise made during the course of the hearing of an appeal and thereupon incorporated by the Appellate Court in its decree does not require registration.

Held further, that the refusal of one of the parties to an executed deed to present himself before the registration authorities at the time of its registration by the other party, does not render the registration invalid. The certificate of registration is proof that the registration took place according to law.

Held also, it being the almost universal practice in the Punjab for transferees to consult the public records to ascertain whether the properties to be transferred to them are encumbered, the fact that the vendees in this case neglected to consult these records attracted to them the effects of notice, even if registration be held not to be constructive notice.

Held further, that in the present case section 27 (b) of the Specific Relief Act was not applicable because the prior contract of mortgage in the form prescribed by section 6 (b) of the Punjab Alienation of Land Act, was an executed contract and not an executory one.

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March 13.

First appeal from the decree of Khan Sahib Shahzada Sardar Sultan Asad Jan, Senior Subordinate Judge, Sheikhpura, dated the 18th November 1922, dismissing the claim.

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MOTI SAGAR and HARI CHAND, for Appellant.

DALIP SINGH and SLEEM, for Respondents.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—In January 1915 the plaintiff Bank obtained a decree for over Rs. 21,000 against Raza Ali and Muhammad Ali. Raza Ali alone appealed to the Punjab Chief Court. In that Court the case was compromised on the appellant undertaking to pay the decree money with interest by instalments and defendant No. 1, Muhammad Hassan Khan, the adopted son of Raza Ali, to whom Raza Ali in 1917 had transferred the bulk of his landed property, became a surety under the compromise for the satisfaction of the decree and mortgaged his land as security therefor. The decree of the Chief Court was passed in accordance with the terms of the compromise which was incorporated in the decree. Subsequently Muhammad Hassan Khan executed a formal mortgage bond on the 15th of January 1919, but when called upon to admit its execution before the registration authorities, refused to appear, so that by order of the Registrar the mortgage bond was registered in the absence of Muhammad Hassan Khan on the 3rd of November 1919. This notwithstanding, Muhammad Hassan Khan dishonestly sold the mortgaged property to defendants Nos. 2, 3 and 4, and the suit out of which this appeal arises was brought by the plaintiff Bank for a declaration that their mortgage has priority over the conveyances executed by Muhammad Hassan Khan in favour of the defendants.

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The learned Subordinate Judge has dismissed the plaintiff's suit on the following grounds :—

(1) The plaintiff Bank is not an agriculturist. Consequently the Civil Court is not competent to pass a decree in favour of the Bank.

(2) The compromise cannot affect the mortgaged property inasmuch as it was not registered.

(3) The mortgage bond was not duly registered.

(4) Muhammad Hassan Khan is not shown to have attained majority at the time of the compromise.

(5) The transferees defendants were *bonâ fide* purchasers without notice of the Bank's mortgage and are protected by section 27 of the Specific Relief Act.

From the decree of the Court below the plaintiff Bank has preferred this appeal, and after hearing counsel and perusing the record we find ourselves in disagreement with the learned Senior Subordinate Judge on each of the points above specified. The appeal has been defended by only defendants Nos. 2, 3 and 4 and has been heard *ex-parte* against Muhammad Hassan Khan. We deal *seriatim* with the findings of the Court below :—

(1) Admittedly the Bank is not an agriculturist and for that very reason it was provided in the mortgage deed that the mortgage should take the form prescribed in section 6 (1) (b) of the Land Alienation Act which is one of the forms prescribed by law for mortgages granted by a member of an agricultural tribe in favour of a mortgagee not a member of an agricultural tribe. The learned Subordinate Judge has evidently not studied the Alienation of Land Act.

(2) The compromise in the appeal before the Chief Court was incorporated in the decree of that Court and consequently became a part of the Court's decree and required no registration for its validity.

(3) There is ample authority for the view that refusal to appear after notice before the registration authorities amounts to a denial of execution. Even if that were not the case, the mortgage contract was as a matter of fact registered on the 3rd of November 1919 and the certificate of registration is proof that the document was duly registered in the manner provided for by law.

(4) The burden of proving that at the time of the compromise Muhanumad Hassan Khan was not of full age lay heavily upon him and he has entirely failed to discharge that burden. His own statement on solemn affirmation is that on the 15th of January 1919, the date of the execution of the mortgage deed, he was 19 years old, and he adds that at the time of the execution of the compromise he was below 18 years of age. These two statements are contradictory, for if he was 19 years of age on the 15th of January 1919 he must have been 18 years of age on the date of the compromise, namely, 6th of March 1918, *i.e.*, less than a year before the date of the execution of the mortgage deed. He has produced no evidence in support of his contention which we find to be unsubstantiated, but in any case the matter is of no importance, for the present suit is founded not on the compromise but on the executed and registered mortgage deed.

The last point is the good faith of the defendants transferees. Now, defendants Nos. 2 and 3 *Sh.* Abdul Aziz and *Sayad* Nazir Hussain are both residents of Hussainabad—the village where the land is situated—and it is difficult to believe that they were unaware of Muhammad Hassan Khan's transactions with the Bank. Similarly, defendant No. 4 is a *Kazalbash*, a member of the same tribe as Raza Ali and Muhammad Hassan Khan, and we find it hard to believe that

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he too was not aware of the Bank's mortgage. Moreover, these transferees admit that they did not consult the public registers to ascertain whether the properties transferred to them were encumbered, and as this is the almost universal practice in the Punjab, this fact throws further doubt upon the *bonâ fides* of the transferees. Moreover even if registration be held not to be constructive notice, the gross neglect of the transferees attracts to them the effects of notice.

However that may be, the suit is not one for specific performance of a contract. The contract is not executory but is an executed contract, and the provisions of section 27 of the Specific Relief Act do not apply and cannot in any way benefit the defendants transferees. By the mortgage deed Muhammad Hassan Khan purports to mortgage his property for the satisfaction of the Bank's decree and provision is therein made for the entry of the Bank into possession of that property on the failure of the debtor to pay the instalments provided in the decree, with a further proviso that the duration of the Bank's possession shall be determined as provided in section 6 (1) (b) of the Punjab Alienation of Land Act by the Deputy Commissioner.

For the foregoing reasons we find that Muhammad Hassan Khan did execute the mortgage in favour of the plaintiff Bank, that that mortgage was executed by him when he was of full age, that it was duly registered and being prior in time it has priority in right to the subsequent sales of the same property by Muhammad Hassan Khan in favour of defendants Nos. 2, 3 and 4, that the plaintiff Bank is entitled in accordance with the stipulations in the contract to apply to the Deputy Commissioner to place it in possession for such term not exceeding twenty years as

the Deputy Commissioner may consider to be equitable and we decree accordingly. The costs of the plaintiff Bank shall be paid throughout by the defendants. Appeal accepted.

N. F. E.

Appeal accepted.

REVISIONAL CRIMINAL.

Before Mr. Justice Martineau.

ATTAR SINGH—Petitioner,

versus

THE CROWN—Respondent.

Criminal Revision No. 216 of 1924.

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March 30.

Criminal Law (Amendment) Act, XIV of 1908, section 17 (2)—Promoting formation of "Jathas"—Authorisation by Shromani Gurdwara Parbandhak Committee must be proved.

The accused was charged and convicted under section 17 (2) of the Criminal Law (Amendment) Act, and it was found that he had exhorted Sikhs to organise themselves into "Jathas" in the name of the Shromani Gurdwara Parbandhak Committee, of which the accused was not proved to be a member, but which itself and all "Jathas" organised by or affiliated to it had been declared to be unlawful associations.

Held, that failing proof that the accused had the authorisation of the Shromani Gurdwara Parbandhak Committee (which fact could not be presumed from his having given out that he was acting on its behalf) the conviction could not be sustained.

Held also, that section 17 (2) of the Act was not applicable to the case as the accused by urging his hearers to form themselves into "Jathas" could not be said to have promoted or assisted in promoting *meetings* of the "Jathas" when the "Jathas" themselves had not come into existence.

Application for revision of the order of Lt.-Col. J. Frizelle, Sessions Judge, Rawalpindi, dated the 6th December 1924, affirming that of Malik Ladha