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it is not alleged that the plaintiffs did anything of the kind; and we must, therefore, assume that they took upon themselves to negotiate with the Government for lands of which they were not the owners. If they voluntarily undertook to pay, and have since paid, the quit-rent on such lands, we cannot say that they are entitled to recover the amount so paid from the owners of the lands. It is true that the defendants have apparently for some years paid to the plaintiffs the amount, or part of the amount, levied from them as quit-rent by the Government; but we cannot hold that such payments estop the defendants, when better informed of their rights, from contesting the title of the plaintiffs to any further payments, or from asking the Government to modify the plaintiffs' *sanad*, and to grant a *sanad* to themselves in respect of the land in their possession. It appears that such a demand has been made by the defendants; and we think that the plaintiffs would, if well advised, acquiesce in that demand, and so escape any further payments on account of the land held by the defendants. We confirm the decree of the Court below with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Maxwell Melvill and Mr. Justice Kemball.

September 1.

NA'RU AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* GULA'BSING (ORIGINAL PLAINTIFF), RESPONDENT.*

Mortgage—Possession—Registration—Sale in execution of decree—Rights of purchase—Priority—Right to redeem—Parties to suit.

By two deeds, dated respectively the 22nd February 1868, and 7th September 1872, and duly registered, A mortgaged the lands in dispute to B for a term of years which expired in 1880. On 10th October 1873, A executed a *rázináma* in favour of B relinquishing all his right in the said lands, and B next day executed a *kabuláyat* to Government for the lands, which thenceforward were entered in B's name. Previously to the second mortgage and *rázináma* to B, viz., on 21st March 1870, A had by a duly registered deed mortgaged the same lands to the plaintiff, who in 1874 brought a suit against A. upon his mortgage and obtained a decree, under which he sold the mortgaged property, and became himself the

* Second Appeal, No. 240 of 1879.

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purchaser thereof. Before, and at the time of the institution of this suit, B was in possession of the mortgaged land, but was not made a party to the suit. In 1877 B sold the land to C by a duly registered deed. In a suit brought by the plaintiff against B and C to recover possession of the land so purchased by him, as above mentioned, at the sale in execution of his own decree,

Held that B's possession at the date of the plaintiff's suit upon his mortgage was sufficient to put the plaintiff on inquiry, and to constitute legal notice to him that the equity of redemption was at that time vested in B, and it was therefore the plaintiff's duty to have made B a party to the suit brought by him against A, who had then alienated the equity of redemption to B; and not having done so, the plaintiff could not rely in support of his own title, upon a purchase under his own irregularly obtained decree, and could not, therefore, stand in a better position as against B than if his original suit had been properly constituted, *i.e.*, he was bound to give B an opportunity of redeeming his mortgage.

THIS was a second appeal from the decision of E. Cordeaux, Judge of Khándesh, reversing the decree of the Subordinate Judge of Erandol.

The facts of the case appear from the following extract of Mr. Cordeaux's judgment:—

"On 22nd February 1868, one Dilá mortgaged the land in dispute to the defendant Náru under an agreement for a period of six years, that is, up to the year 1874. Again, on 7th September 1872, Dilá executed another agreement by which the land was mortgaged for an additional period of six years, that is, up to the year 1880. Both the instruments, (exhibits 11 and 12,) were registered. On the 10th October 1873 Dilá passed a *rázínáma*, in favour of Náru, of the land in dispute, relinquishing all his right therein, and Náru passed a *kabuláyat* to the Government on the following day, the land henceforth standing in his name. But Dilá had also mortgaged the same land to the plaintiff on the 21st March 1870 under a registered deed. Subsequently, the plaintiff obtained a decree against the mortgaged property, which was put up to sale and bought in by the plaintiff for Rs. 5-4-0 on the 27th April 1875. On the 2nd May 1877 the defendant Náru sold the land to Hirá, (defendant No. 2,) under a registered deed of sale (exhibit 15). The defendant Náru was in possession of the land from the year 1868, and the mortgage to the plaintiff was unaccompanied by possession."

Under these circumstances the plaintiff sued to recover posses-

sion of the land, making Náru and Hirá defendants. The defendants, *inter alia*, contended that their title was superior to the plaintiff's.

The Subordinate Judge rejected and the District Judge allowed the plaintiff's claim. The latter found—(1) that the plaintiff was entitled to possession of the land as auction purchaser thereof in satisfaction of his mortgage lien; (2) that Dilá conveyed the land to Náru subsequently to his mortgage of it to the plaintiff, and that Náru had notice of the said mortgage; and (3) that the land was subject to the plaintiff's lien upon it.

The defendants appealed.

Shántárám Náráyan for the appellants.—The District Judge held that the transfer of the land by Dilá to Náru was for valuable consideration, and complete. The defendants' mortgage (No. 11) being prior to that executed to the plaintiff, and the defendants being in law entitled to tack their mortgage No. 11 to mortgage No. 12, the Judge should have held that these mortgages were entitled to preference over the plaintiff's mortgage. The defendants' mortgage was with possession, while the plaintiff's was not. The plaintiff should have made the defendant Náru a party to his suit against Dilá. He having failed to do so, the decree against Dilá does not bind either Náru or Hirá. These defendants having by the purchase acquired the whole right, title and interest of Dilá therein, the plaintiff got nothing. At any rate we are entitled to redeem the plaintiff.

Mánekshah Jehángirshah for the respondent.—The doctrine of tacking of mortgages does not obtain in India. The plaintiff was not bound to make Náru a party to his suit against Dilá not having had any notice of Náru's mortgage, nor of the quent sale of the equity of redemption. This case is that of *S. B. Shringárpure* v. *S. B. Pethe*, [1] on which

The judgment of the Court was delivered by

M. MELVILL, J.—The plaintiff in this suit, claim gage, brought an action against his mortg obtained a decree, under which he attached

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gaged property, and himself became the purchaser. He is now resisted by the defendant, who, at the date of the plaintiff's suit, was in possession by virtue, first, of a registered mortgage, and, secondly, of a subsequent assignment of the equity of redemption for valuable consideration. The question which we are asked to decide is, whether the defendant can be ousted without the option of redeeming the plaintiff's mortgage. On the one side it is contended that the defendant is not bound by the decree obtained by the plaintiff against the mortgagor, because he was not a party to the suit; on the other side, that the plaintiff was not bound to make the defendant a party to the suit, because he had no notice of the defendant's mortgage, nor of the subsequent sale to the defendant of the equity of redemption. It is not necessary for us now to consider whether, if the plaintiff had no notice of the defendant's encumbrance and assignment, the defendant would be bound by the decree obtained by the plaintiff against the mortgagor. There is some apparent conflict between certain observations made in the case of *Shringárpure* v. *Pethe* [1] and the decision of this Bench in *Ganesh* v. *Bálkrishna* [2] and other cases, a decision to which, as at present advised, we still adhere. But in the present case we think that the defendant's possession, at the date of the plaintiff's suit, was sufficient to put the plaintiff on inquiry, and to constitute legal notice to the plaintiff that the equity of redemption was at the time vested in the defendant. If the plaintiff had inquired into the cause of the defendant's possession, he would have ascertained that he was the purchaser of the equity of redemption, or, at all events, that he was a registered encumbrancer. It was, therefore, the plaintiff's duty to make the defendant a party to the suit brought by him against the person who had sold the equity of redemption to the defendant; and such being the case, the plaintiff cannot rely, in support of his title, upon a purchase under his own irregularly obtained decree, even if the defendant, who was an innocent purchaser, could have done anything which it is not now necessary for us to express any

(1) I. L. R. 2 Bom. 662.

...of 1878: Printed Judgments of 1879, p. 28.

t; (4) whether the claim, if any, of the plaintiff in the
l is not barred by the Limitation Act; (5) whether the
at, in para. 5 of the plaint mentioned, is binding on the
(6) whether, if this suit be maintainable against the
he Administrator General is not a necessary party to
er, in case there be any claim maintainable at all against
Hansráj Karamsi, his self-acquired property is not
sfy such claim in priority to his property which was
al character; (8) whether the defendant is in possession
cquired property of the said Hansráj Karamsi; (9)
plaintiff is entitled to any and what relief as claimed

cipal witness on behalf of the plaintiff was Dámji
d it is obvious that any evidence of his, on what
main question in this suit, is open to the observa-
strongly for his interest (particularly in the events
appened, viz.:—the disputes with Jumnábái, the
ssion by her of property of Hansráj Karamsi, and
; own retirement from the office of executor) to
rsonal liability in respect of the estate which he has
Beyond, however, any argument founded on what
e face of the documentary evidence, and the fact that
dered to be established, that Dámji was unwilling
nd of the 5th March 1873, except as executor, the
intiff really depends on this evidence. As to what
bsequently to the 5th March 1873, and in pursuance
ed agreement exhibits D and G were executed, the
mji, that such latter agreement was one for throwing
f the debt on the estate of Hansráj Karamsi, is not
ed by Nársidás, who, as Mánkuvarbái's munim, took
alleged subsequent arrangement. Nársidás says:—
pur on his part agreed to pay Rs. 23,000 by annual
f Rs. 3,000 each. Dámji did not say that it was
t of the estate; in fact, that matter was not discussed."
however, Dámji may have thought he was protecting
nst personal liability by signing the bond as executor.
derstand how the present plaintiff, claiming as she
h Mánkuvarbái, can contend that he did so having