

that purpose. We must, therefore, require the Court below to find on the following issue, and return its finding to this Court within three months :—

Was the plaintiff dispossessed of the land in question by the defendant?

Issue sent down for trial.

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YASHVANT
v.
VÁSUDEV
APÁJI
GHOTIKAR.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and
Mr. Justice Nánábhái Haridás,*

DEVIDA'S JAGJIVAN (ORIGINAL PLAINTIFF), APPELLANT, v. PIRJA'DA
BEGAM, WIDOW OF MAHOMED MURTUJA (ORIGINAL DEFENDANT,
RESPONDENT.*

April 17.

*Sale—Confirmation of sale—Lots—Auction—Certificate of sale—Evidence—
Registration—The Code of Civil Procedure, 1882, Secs. 59 and 63.*

In compliance with an application for the sale of land to satisfy a decree the Civil Court put up certain land to auction in four lots. One lot was purchased by the plaintiff for Rs. 88, and each of the other three were bought by him for less than Rs. 100, the price for the whole amounting to Rs. 111-8-0, for which amount the Court granted a single certificate of sale dated 10th February, 1874. This certificate was never registered. The plaintiff applied to be put in possession; but, the defendant resisting him, his application was rejected. On the 16th of November, 1879, the plaintiff brought this suit to have his right declared to the piece bought for Rs. 88, and to recover its possession. Along with the plaint the plaintiff produced the unregistered certificate of sale of the 10th February, 1874. On the application of the plaintiff, another certificate for the same property was issued by the Court to the plaintiff on the 31st of October, 1877,—that is, three years after the confirmation of sale. This was registered on the 20th of December, 1877, and was produced by the plaintiff in the proceedings which gave rise to the present suit. It was obtained by the plaintiff on the 23rd of February, 1880, and tendered in evidence, but was rejected under section 63 of the Code of Civil Procedure (XIV of 1882).

Held that, although the four lots purchased by the plaintiff at the auction sale were included in one certificate of sale, such certificate, although one instrument in form, should, for the purpose of registration, be regarded as four separate certificates of the four several lots.

Held, also, that the registered certificate of sale, though issued three years after the confirmation of sale, was valid and admissible in evidence.

* Second Appeal, No. 67 of 1883.

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Vithal Janardan v. Vithojirav Putlajirav (1) approved, and *Inre Khajá Pathhanji*(2) and *Tukdrám v. Satviji Khandoji* (3) dissented from.

Held, also, that the refusal to admit in evidence the registered certificate of sale under section 63 of the Code of Civil Procedure (XIV of 1882) on the ground that it had not been produced with the plaint, as required by section 59 of the Code, was improper, there having been no doubt of its existence at the date of suit.

THIS was a second appeal from the decision of Khán Báhádur M. N. Nánávati, Subordinate Judge (First Class) with appellate powers at Thána, confirming the decree of Ráv Sáheb Abáji Balvant Bhise, Subordinate Judge (Second Class) at Kalyán.

This action was filed by the plaintiff to have it declared that certain land mentioned in the plaint belonged to him, and to recover possession of it from the defendant. The plaintiff alleged that he caused it to be sold by the Court in execution of a decree against one Mahomoodji; that the Court put it up to auction in four lots; that he purchased the lot now in dispute for Rs. 88, and all the four for Rs. 111-8-0, for which the Court granted to him a single certificate of sale dated 10th February, 1874; that the plaintiff applied to be put into possession, but, the defendant having obstructed him, his application was rejected, and hence he brought the present suit on 16th of November, 1879. The plaintiff produced along with his plaint the unregistered certificate of sale.

The defendant answered that the property was her own, and had been in her possession for more than twelve years; that the plaintiff had no claim to it; and, even if he had such claim, it was time-barred.

During the course of the suit the plaintiff tendered in evidence another certificate of sale relating to the property in dispute. It was issued by the Court on the 31st of October, 1877, and registered on the 20th of December, 1877. The plaintiff in tendering it for admission stated that he could not produce it earlier, as it had been produced in the miscellaneous proceedings out of which this suit arose. The Subordinate Judge (Second Class) refused to receive it, and on the merits rejected the plaintiff's claim.

(1) I. L. R., 6 Bom., 586.

(2) I. L. R., 5 Bom., 202.

(3) I. L. R., 5 Bom., 206.

The Subordinate Judge (First Class) confirmed his decree. He was of opinion that the certificate of sale of the 10th February, 1874, declared interest of the value of more than Rs. 100, and should have been registered under section 17 of Act VIII of 1871; and not being registered it could not, under section 49 of the Act, affect any immoveable property comprised therein, nor be received as evidence of any transaction affecting such property. The Appellate Court was also of opinion that the registered certificate of sale, dated 20th December, 1877, having been granted more than three years after the confirmation of sale, and not being produced along with the plaint, was inadmissible in evidence.

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The plaintiff appealed to the High Court.

Ghanashám Nilkanth Nádkarni for the appellant.—The property in dispute having been purchased for Rs. 88, the registration of a certificate of sale was optional, not obligatory. The unregistered certificate was, therefore, relevant, but if it was rejected, the registered certificate should have been admitted. The facts of the case show that it was undoubtedly in existence at the date of the suit. Not a doubt has been suggested in regard to its existence, and the circumstance that it was not entered in a list annexed to the plaint, is not a sufficient reason for the Court refusing to admit it. It was produced as soon as it could be procured. The plaintiff was entitled by law to take out a certificate of sale as often as he required it.

The respondent did not appear.

SARGENT, C. J.—We are inclined to think that, although the the four lots purchased by plaintiff at the auction sale were included in one certificate of sale, such certificate, although one instrument in form, should, for the purpose of registration, be regarded as four separate instruments of certificate of the four several lots, each of which was admittedly the subject of a distinct contract of sale, and of a less value than Rs. 100. But, however that may be, the lower Courts were wrong, we think, in not admitting the registered certificate which was tendered in evidence during the hearing of the cause. The main ground of their refusal would appear to have been that it had been granted

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to appellant more than three years after the confirmation of the sale, relying on *In re Khája Patihanji* and *Tukárám v. Satváji Khandoji*⁽¹⁾. But those decisions must now be regarded as overruled by *Vithal Janárdan v. Vithojiráv Putlájiráv*⁽²⁾ even if the lower Courts were entitled to take the objection of the Statute of Limitations, which may well be doubted, as pointed out under similar circumstances in the above case.

As to the appellant not having produced the registered certificate when the plaint was presented as required by section 59, we think that, as no doubt of its existence at the time the suit was instituted was even suggested, the Courts below ought not to have refused their consent to its being given in evidence, as required by section 63. We must, therefore, reverse the decrees of both the lower Courts, and send back the case for trial on the merits. Costs of appeal to follow the result.

Decree reversed.

(1) I. L. R., 5 Bom., 202 and 206.

(2) I. L. R., 6 Bom., 586.

APPELLATE CIVIL.

Before Mr. Justice Bayley and Mr. Justice Pinhey.

May 9,

BA'I AMRIT, WIDOW OF HARIBHA'I ICHA'RA'M, APPLICANT.*

Practice—Procedure—Return of plaint—Decree passed on plaints.

The ruling in the case of *Prabhákarbhat bin Janárdanbhat* (1), which approves of the practice of returning the plaint for presentation to the proper Court when the trying Court has no jurisdiction prevailing in the Mofussil Courts and on the Appellate Side of the High Court of Bombay, does not govern, and is distinguishable from cases in which there have been decrees passed on the plaint.

Per BAYLEY, J.—The practice on the Original Side of the High Court of Bombay has always been to retain a plaint, unless it has been returned on presentation.

Per BAYLEY, J.—*Quære*, whether a ruling of three Judges of the High Court of Bombay on a case referred by a Division Bench of two Judges for decision by the Full Bench can be regarded otherwise than a ruling of a Division Court of three Judges?

THIS was an application for the return of a plaint for presentation to the proper Court.

Máneeksháh Jehángirsháh Taleyárlkhán for the applicant.

* Civil Application, No. 103 of 1884.

(1) *Supra*, p. 313.