

1885.

SAKHARAM
GOVIND
KALE
v.
DAMODAR
AKHARAM
GUJAR AND
KESO GOVIND
NANDGIRI.

satisfaction of the decree. The ruling in *Paranjpe v. Kanade*⁽¹⁾ applies to the present case.

We must, therefore, reverse the Subordinate Judge's order, and direct him to deal with the application afresh. Whether it will be necessary or proper for him to make any other person than the judgment-creditor a party to the proceedings for the purpose of the application, we do not now decide. The costs of this application to be costs in the application before the Subordinate Judge, and to be dealt with by him.

Order reversed.

(1) I. L. R., 6 Bom., 148.

APPELLATE CIVIL.

Before Mr. Justice Nanabhái Haridas and Sir W. Wedderburn, Bart., Justice.

LAKSHMAN, APPLICANT.*

Practice—Unregistered certificate of sale—Fresh certificate of sale granted.

On 10th July, 1883, the applicant bought at a Court sale a portion of a house for Rs. 385, and on confirmation of the sale on the 10th October, 1883, obtained the sale certificate, which, however, he did not register. On attempting to obtain possession, the applicant was obstructed. He applied for removal of the obstruction to the Subordinate Judge, and submitted with his application the unregistered certificate. The Subordinate Judge rejected the application, on the ground that the certificate was not registered. The applicant then applied for a fresh certificate, which was refused. On application to the High Court,

Held, that a fresh certificate, dated the day on which it might be granted, reciting the fact of the sale and the date thereof, should be given to the applicant, the original certificate being returned.

This was an application, under the extraordinary jurisdiction of the High Court, against the order of M. H. Scott, District Judge of Ahmednagar.

At a Court sale held on the 10th July, 1883, the applicant purchased, for Rs. 385, one-half of a certain house, and on the 10th October, 1884, after confirmation of the sale he obtained the sale certificate. He subsequently obtained an order for possession. On attempting to take possession of the premises,

*Extraordinary Civil Application, No. 48 of 1885.

however, he was obstructed. He thereupon made an application for the removal of the obstruction, and filed his sale certificate, which had not been registered. The Subordinate Judge of Ahmednagar rejected the application, on the ground that the certificate was not registered. The applicant applied on 22nd October, 1884, for a fresh certificate, which application was rejected on 29th November, 1884. Thereupon the applicant applied to the District Judge, but the District Judge rejected his application with the following remarks:—

“I do not understand what I am asked to do. Apparently the petitioner wishes this Court to direct the First Class Subordinate Judge to issue a new certificate of sale in place of one formerly issued, because the former certificate, not having been presented to the sub-registrar in time, could not be registered, and being unregistered is inadmissible in evidence. I doubt if this Court has power, under section 9 of Bombay Act XIV of 1869, to direct as subordinate Court to issue a certificate of sale; but, if it has such power, I do not understand how it can be exercised in this case. The Court of the First Class Subordinate Judge having already granted a certificate cannot well grant another. If it did, however, it could only grant a duplicate, the date on which would be the same as on the original, *viz.*, the date of the confirmation of the sale (section 316 of Act XIV of 1882). Under section 89 of the Registration Act III of 1877, as amended by Act XII of 1879, the Court forwards a copy of a certificate of sale for registration of its own motion, and this would probably be sufficient registration, even if the original certificate were never registered at all. In that case the copy of the copy in the registrar's book would be admissible in evidence probably, though the so-called original had not been registered.

“It may be observed that the Court does not keep copies of certificates of sale, and that, if a certificate is lost, all that the Court can supply, is a copy of the entry in the *barnishi* or register.

“I am unable to grant the application. The case of *Devidás v. Pirjāda Begam*⁽¹⁾ has been pointed out to me; but the point of

(1) I. L. R., 8 Bom., 377.

1885.

LAKSHMAN.

a second issue of a certificate was not expressly taken in that case, nor was it explained how a certificate issued as a *duplicate* three years after date was capable of registration.

“If the certificate bear a new date of any kind, it would differ from the copy already in the registrar’s book, and this may cause confusion.”

The applicant, therefore, made the present application to the High Court under its extraordinary jurisdiction.

Mahádev Ohimnáji Apte for the applicant.—The applicant is entitled to a fresh certificate. Though under some misapprehension the applicant failed in getting his certificate registered, he could have got it subsequently registered if the certificate had not been detained in Court until final disposal of the applicant’s application for the removal of the obstruction. Under similar circumstances a fresh certificate was granted: see *Mohidin v. Mahádaji* referred to in *Lálbhái v. Navál*⁽¹⁾. See also the case of *Ládu Sáheb v. Irbassapa* decided 4th October, 1871. In the extraordinary application No. 92 of 1875 decided on 30th March, 1876, this Court made an order that a fresh certificate should be granted, and the facts of that case were similar to those in the present case.

ORDER.—The Court orders that a fresh certificate, dated the day on which it may be granted, and reciting the fact of the sale and the date thereof, should be given, the original certificate now in the possession of the petitioner being returned.

(1) 12 Bom. H. C. Rep. at p. 249, A. C. J.