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article 19 of the second schedule applies, and the plaint must be as against these two defendants on the ground that the suit is barred by lapse of time.

*Summons discharged.**

Attorney for the plaintiff.—Mr. *E. Wilkin.*

Attorneys for the first defendant.—Messrs. *Oraigie, Lynch and Owen.*

Attorneys for the second and third defendants.—Messrs. *Chalk and Walker.*

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

August 23.

NANJUNDEPA AND GURULINGAPA (ORIGINAL DEFENDANTS NOS. 1 AND 5), APPELLANTS, v. HEMAPA BIN IRAPA AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Decree—Execution—Sale of equity of redemption—Purchaser at execution sale—Sale in execution of decree on mortgage prior in date—Priority—Possession—Notice—Certificate of sale.

On the 18th January, 1877, the father of the plaintiffs purchased the interest of M. in two houses at a sale in execution of a money decree against M. The purchaser, however, never obtained possession and he did not obtain the certificate of sale until the 31st July, 1878.

Subsequently to the sale of the 18th January, 1877, two suits were filed against M. on mortgages executed prior to that date and decrees in both were obtained against M. In execution of these decrees both the houses were sold and the respective purchasers were represented by two of the defendants. The purchasers got possession and both obtained sale-certificates, one prior to the sale to the father of the plaintiffs, viz., on 5th February, 1878, and the other subsequently, viz., 1st November, 1878. The plaintiffs now sued to recover the houses.

Held that the plaintiffs were not entitled to recover as against the defendants. The plaintiffs not having either got possession or obtained a certificate of sale at the date of the sale in execution of the decrees on the mortgages, had only an inchoate title. The purchasers in execution had no notice of the plaintiffs' incipient right and having been left to buy what, so far as they knew, was a complete title they ought not to be disturbed at the instance of the plaintiffs who failed to assert their dormant right. Had the plaintiffs got into possession or obtained a certificate and registered, there would have been notice sufficient to put all persons interested in inquiry as to their rights; but while they chose to keep their

*Second Appeal, No. 469 of 1883.

rights wholly in the dark they invited others to act as if those rights were not in existence and they could not look to the Courts to extend and complete such rights in a way which would render the defendants victims not of their own negligence but of the negligence of those who would gain by it.

THIS was a second appeal from the decision of A. C. Watt, Acting District Judge of Dhárwár.

On the 18th January, 1877, Irapa, the deceased father of the plaintiffs, purchased the interest of one Mariabasapa in two houses the subject-matter of this suit, at a Court sale in execution of a money decree obtained by the creditor of Mariabasapa against him. Irapa never obtained possession and he did not obtain the certificate of sale until 31st July, 1878.

In the meantime Mariabasapa was sued upon mortgage of one of the two houses in question, executed by him to one Halaya in 1872 and a decree in that suit was passed on 19th June, 1877. In execution of this decree the house was sold and purchased by the first defendant Nanjundepa on 4th January, 1878, who obtained the certificate of sale on 1st November, 1878, and was given possession of the house on or about 8th January, 1879.

Another suit was subsequently brought on another mortgage of the other house executed on 14th July, 1874, and a decree was obtained against Mariabasapa in execution whereof the other house was sold on 4th November, 1877, and one Gurulingapa became the purchaser. He took out the certificate of sale on 5th February, 1878, and was put in possession on or about 7th September, 1878. Both the mortgages had been executed by Mariabasapa to the said Halaya but at different times and for different considerations. The decrees on both the mortgages were *ex parte* decrees and ordered that the mortgaged property should be sold, and declared that if the lien were not discharged by sale proceeds, the mortgagor should be personally liable to make up the deficiency.

Gurulingapa, however, subsequently to his purchase resold the house to Halaya, the original mortgagee, on 3rd November, 1879, and the document of sale was registered. The purchase by plaintiffs' father at the Court sale in execution of the money decree against Mariabasapa was thus prior in date to that of both Nanjundepa and Gurulingapa.

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In 1881 the plaintiffs by their next friend sued the defendants in the Subordinate Judge's Court at Háveri in the Dhárwár District, and sought to recover possession of the two houses in question.

The defendants contended that their purchases were at sales in execution of decrees obtained on specific mortgages of the houses, and that they having been put in possession, their titles were superior to that of the plaintiffs who had no possession and whose father was a purchaser at a sale in execution of a mere money decree. The Subordinate Judge held the plaintiffs entitled to possession of house No. 1 on payment of Rs. 216 to the first defendant, and that of the house No. 2 on payment of Rs. 95 to the wife of Halaya, the fifth defendant, and ordered that the said payments should be made within six months from the date of the decree.

Both the parties appealed and the District Judge amended the decree of the Subordinate Judge by substituting the sums of Rs. 132 and Rs. 80 respectively for those made payable by the Subordinate Judge to be paid within three months from the date of the decree of the District Court, after which period he held the right of redemption foreclosed.

The defendants appealed to the High Court.

Shámráv Vithal for the appellant.—The sale on the mortgage decrees, though subsequent to that at which the father of the plaintiffs was a purchaser, yet the appellants had obtained their certificates before the respondents' father had obtained his certificate. Until the purchaser gets his sale certificate no legal right vests in him. The title of the appellants is fortified by possession and prior sale-certificates and is therefore superior to that of the plaintiffs.

See *Padu Malhari v. Rakhmai* ⁽¹⁾; *Basapu v. Marya* ⁽²⁾; *Tukárám v. Khánduji* ⁽³⁾; *Krishnáji v. Ganesh* ⁽⁴⁾; *Lachmi Náráyan v. Indrabhan* ⁽⁵⁾; *Shivrám v. Rávji* ⁽⁶⁾.

There was no appearance for the respondents.

(1) 10 Bom. H. C. Rep., 435.

(2) I. L. R., 3 Bom. at p. 436.

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

(4) I. L. R., 6 Bom. at p. 142.

(5) Printed Judgments for 1883, p. 254.

(6) I. L. R., 7 Bom., 254.

•WEST, J.—In this case the plaintiffs' predecessor in title purchased the interest of Maribasapa in the property in dispute at a sale in execution of a decree on a simple debt. This was on the 18th January, 1877, but possession was not obtained; nor until the 31st July, 1878, was a certificate of sale obtained by the purchaser.

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In the meantime, Maribasapa was made defendant in two suits filed after the sale of January, 1877, on mortgages executed prior to that date and found by the District Judge to be genuine and valid. In execution of the decrees obtained on these mortgages, the property in dispute was sold to purchasers represented by defendants Nanjundepa and Nilowa. The purchasers promptly got possession: their sale-certificates were obtained on the 5th February, 1878, and the 1st November, 1878, one earlier and one later than the certificate of sale obtained by the plaintiffs' predecessor.

When the plaintiffs sought possession, they were resisted by defendants, and failed in their application for the removal of the resistance. They then sued to establish their right. The Subordinate Judge awarded to them a right to redeem on paying defendants, who had purchased in execution under the sale on the mortgage, the amount due on account of the mortgage. He thus put the first purchaser in the place of the mortgagor and the subsequent purchasers in the place of the mortgagee before the suit and sale.

Both parties appealed, and the District Judge decreed that the plaintiffs should obtain possession on paying to the defendants holding under the mortgage sale, not the sums due on account of the mortgages, but the amounts of their respective purchase moneys.

Now, when the plaintiffs' predecessor bought Maribasapa's interest, that interest was already subject to deduction in such ways as should be requisite to give effect to his mortgage. One of these was a sale of the property, and all rights of Maribasapa in it, on failure of the mortgagor Maribasapa to pay what should be decreed against him on the mortgagee's suit. Thus the plain-

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tiffs' predecessor gained no interest by his purchase which was not liable to entire defeat by the suit and sale on the mortgage, and the purchasers under that sale would take by a title prior in origin and superior to his. But then the earlier purchaser of Maribasapa's interest, which was that of a mortgagor, having by this become the person really interested, ought, it may be said, to have been made a party-defendant by the mortgagee, and cannot be affected by his suit against a mortgagor who had ceased to have any real interest in the property. Generally the mortgagee must make defendants of all who are interested in the equity of redemption; but in this case the purchaser of the equity of redemption had not yet either got possession or obtained a certificate of sale when the sale took place under the decree on the mortgage. The title of the plaintiffs was thus only an inchoate title; the mortgagee suing the still ostensible owner Maribasapa does not seem to have had notice of the plaintiffs' incipient right; but if he had, the purchasers in execution represented by the present appellants had no such notice. It does not appear that when the proclamations of intended sale were put forth, any one came forward on either occasion to assert the rights now relied on on the one side and the other. The appellants who were thus left to buy what, so far as they knew, was a complete title, ought not to be disturbed at the instance of the plaintiffs who failed to assert their dormant right, unless that is an absolute legal right arising out of their earlier purchase which can be asserted even after the sale under the mortgage. It does not seem to us that they have such a right. The case of *Lachmináryan v. Indrabhan* ⁽¹⁾ is directly against it, and this is a stronger case than that, inasmuch as there the second sale was, like the first, on a money decree, while here the second sale was under a mortgage giving a right to have the whole estate made available for satisfaction of the debt. Had the plaintiffs got into possession or obtained a certificate and registered it, there would then no doubt have been notice given sufficient to put all persons interested on inquiry as to their rights; but while they chose to keep their rights wholly in the dark, they invited others to act as if those rights were not in existence; and they cannot look to the Courts

(1) Printed Judgments for 1883, p. 254.

to extend and complete such rights in a way which would make the defendants the victims, not of their own negligence, but of the negligence of those who would gain by it.

As to the doctrine of *Sobhagchand Gulabchand v. Bhaichand* ⁽¹⁾ that a judgment-debtor's interest is sold subject to all existing equities against him, it is plain that in the present case the equitable right of the plaintiffs at the time of the sale to the appellants, however good as against Maribasapa, had not yet become a right in *re*, an ownership good against every one even as to the remnant of ownership (including possession) left to the mortgagor. When the appellants then purchased without notice of the plaintiffs' equitable right, they acquired a right at least as good; and fortified by possession, this title became a complete one—*Shivram Narayan Mekal v. Ravji Sakharam Pradhan* ⁽²⁾—as against a mere equity available against Maribasapa, but not, except through notice, against those who took his estate by purchase without his consciousness of latent obligations or inchoate rights derogating from his ownership, or rather capable of being asserted against it in the way prescribed by law.

We must, for these reasons, reverse the decrees of the Courts below and reject the plaintiffs' claim with costs throughout.

Decrees reversed.

(1) I. L. R., 6 Bom., 193.

(2) I. L. R., 7 Bom., 254.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

VA'SUDEV B. PANDIT, PLAINTIFF, *v.* NA'RA'YAN V. JOSHI,
DEFENDANT.*

August 23.

*Dekkan Agriculturists' Relief Act, XVII of 1879, Secs. 13, 41, 43, 44 and 46—
Amicable settlement—Finally disposing of the matter—Instalment—Interest.*

The expression "finally disposing of the matter" in sections 43 and 44 of Act XVII of 1879 means no more than the expression "amicable settlement" in sections 41 and 46.

* Civil Reference, No. 32 of 1884.

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