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the other defendants are liable to pay the principal amount of the decree: see *Davlatsing* v. *Pándu*[1]. The provisions of section 257A (Act XIV of 1882) applying only to parties to the decree, and here the other defendants not being parties are liable to pay: see *Yellá Chetti* v. *Munisámi*[2].

Shivrám Vithal Bhandárkar for the defendants:—The whole bond is void, as the two parts cannot be separated. *Davlatsing* v. *Pándu*[1] is on all fours with the present case. If the *haválα* is void, for want of Court's sanction under section 257A of the Civil Procedure Code, the bond, which was based on it, is also void.

NÁNÁBHÁI HARIDÁS, J.:—The *haválα* mentioned by the District Judge was an agreement such as is contemplated in paragraph 1, section 257A, Civil Procedure Code, and, as such, void on account of want of sanction by the Court which had passed the decree.

If the bond sued upon be regarded as one in consideration of the *haválα*, there was no consideration for it; the *haválα* itself was void for the reason above mentioned.

If it be regarded as an agreement for the satisfaction of the decree, it comes under paragraph 2, Section 257A of the Code, and is void for want of the Court's sanction.

For these reasons, we consider the whole bond to be void.

(1) I. L. R., 9 Bom., 176. (2) I. L. R., 6 Mad., 101.

APPELLATE CIVIL.

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

1888.
March 1.

JUGALDA'S, (ORIGINAL DEFENDANT), APPELLANT, *v.* AMBA'SHANKAR AND ANOTHER, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Landlord and tenant—Sale by landlord of land held by tenant—Fraud in such sale—Suit by purchaser against tenant—Plea by tenant impeaching sale by his landlord—Limitation.

The defendant was tenant of the lands in dispute under a lease dated 22nd June, 1875. In 1878 his landlord sold the lands to the plaintiffs by registered deed, but in 1879 complained to the Mámlatdár that he had been cheated by the plaintiffs, who, he alleged, had not paid the purchase-money. This allegation the plaintiffs denied.

* Second Appeal, No. 748 of 1885.

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In September, 1881, the defendant brought a suit against the plaintiffs, in which he prayed for a declaration that the sale of the land to the plaintiffs was fraudulent, and that no consideration had been paid. This suit, however, was withdrawn by the defendant on the 15th November, 1881, with leave to bring a fresh suit, but no fresh suit was brought by him within three years from November, 1881, nor was any suit brought by the plaintiffs' vendors to set aside their sale to the plaintiffs.

In 1883 the plaintiffs brought this suit against the defendant, to recover Rs. 960 as arrears of rent for four years for the lands described in their plaint. They alleged that the lands in question had been sold to them on the 12th September, 1878, and that the lands mentioned in their plaint had been leased on the 22nd June, 1875, to the defendant by their (the plaintiffs') vendors, and that in that lease the defendant had contracted to pay Rs. 240 annually. The defendant in his defence again raised the question whether the sale to the plaintiffs was not fraudulent and without consideration.

Held, that the right of the defendant to plead as a defence to this suit, that the plaintiffs' purchase of the 12th September was fraudulent and void, was barred. As a tenant he had no independent right to impeach the sale by his own landlords. He could only do so with their consent, assuming it to be still open to them to impeach it. But their complaint to the Mámlatdár in 1879 showed that they were then acquainted with the facts which entitled them to set aside the sale, and by the end of 1882, at the latest, their right to file a suit for that purpose was, therefore, barred. Their right to impeach the sale by suit being thus barred, their tenant (the defendant) could not be allowed to impeach it as a defence to an action by the plaintiffs.

THIS was a second appeal from a decision of W. H. Horsley, Acting Assistant Judge of Broach.

The defendant was tenant of the lands in dispute under a lease dated 22nd June, 1875. In 1878 his landlord sold the lands to the plaintiffs by registered deed, but in 1879 complained to the Mámlatdár that he had been cheated by the plaintiffs, who, he alleged, had not paid the purchase-money. This allegation the plaintiffs denied.

In September, 1881, the defendant brought a suit against the plaintiffs, in which he prayed for a declaration that the sale of the land to the plaintiffs was fraudulent, and that no consideration had been paid. This suit, however, was withdrawn by the defendant on the 15th November, 1881, with leave to bring a fresh suit, but no fresh suit was brought by him within three years from November, 1881, nor was any suit brought by the plaintiffs' vendors to set aside their sale to the plaintiffs.

In 1883 the plaintiffs brought this suit against the defendant to recover Rs. 960 as arrears of rent for four years for the lands described in the plaint, alleging that the said lands with other land had been sold to them on the 12th September, 1878; that the lands mentioned in the plaint had been leased on the 22nd June, 1875, to the defendant by their (the plaintiffs') vendors, and in that lease the defendant had contracted to pay Rs. 240 annually. The defendant in his defence again raised the question, whether the sale to the plaintiff was not fraudulent and without consideration. Some members of the family of the plaintiffs' vendors applied to be made co-defendants. The Court of first instance, however, rejected their application, and awarded the plaintiffs' claim.

The defendant appealed to the Assistant Judge, who varied the decree of the lower Court with the following remarks:—

"* * * When the plaintiffs bring this suit for the rent in 1883, the defendant returns to his allegation that the sale-deed is fraudulent and without consideration, and certain members of the vendor's family apply to be made defendants, in order that as defendants they may raise an issue which they could not raise as plaintiffs. It appears to me that they are estopped from so doing. They have by their omission to sue intentionally permitted the plaintiffs to believe their sale to be admittedly true, and to sue for rent thereon, and they cannot now be allowed to deny the truth of the sale-deed. The suit between them and the plaintiffs to set aside the deed of sale is barred by limitation * * * *. They have allowed the period within which they could do so to go by. The defendant, as the tenant of the plaintiffs' vendors, cannot deny their title, or that of the plaintiffs derived from them, and it is, therefore, unnecessary to go into the second point * * *. I amend the decree of the Subordinate Judge and award the plaintiffs Rs. 720 as rent for three years * * *".

From this decision the defendant preferred a second appeal to the High Court.

Gokuldás Kahándás for the defendant:—The right of the defendant to impeach the purchase of the plaintiffs as fraudulent is not barred. His possession was prior to plaintiffs' purchase and

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not under a subsequent agreement. The withdrawal of the suit does not operate as an estoppel—*Raghubár Dayál* v. *Bhikya Lál* (1).

Mánekshá Jehángirshá for the plaintiffs:—The defendant's lessors became aware of the fraud in 1879 when they complained to the Mámlatdár, and at the latest they could sue to set aside their deed of sale in 1882. Their right to sue having lapsed, neither they nor the defendant, who is their tenant, can impeach the sale. Moreover, the defendant withdrew his former suit to have the sale declared fraudulent. He cannot now impeach the deed.

SARGENT, C. J.:—We have already decided that no case of estoppel arises on the evidence against the defendant; but the important question still remains, whether the defendant was debarred by the Limitation Act from pleading that the plaintiffs' purchase of 12th September, 1878, was null and void for want of consideration and on the ground of fraud. As defendant was admittedly the tenant of the Ratansang Gokáji family, of whom the plaintiffs' vendors were members, he had no independent right to impeach the sale by his own landlords, and could only do so with their consent, assuming it to be still open to the latter to impeach it, It is not disputed that he has such consent; and the question, therefore, for consideration is, whether the plaintiffs' vendors could now impeach their own sale-deed.

It has been found by the Assistant Judge that as early as 1879 the vendors complained before the Mámlatdár that they had been cheated and had not received consideration, and it may, therefore, be assumed that they were then acquainted with all the facts entitling them to set aside the sale. By the end of 1882, at the latest, their right to file a suit for that purpose would, therefore, have been barred. The circumstance that they were in possession through their tenants could not affect the application of the Act. They would be equally bound to take proceedings to set aside the sale-deed within the time limited by the Act. Their right to impeach the sale by suit was, therefore, barred, and under these circumstances we do not think their tenant can be allowed to plead the invalidity of the sale in defence to an action to recover possession from him.

(1) I. L. R., 12 Calc., 69.

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We must, therefore, reverse the decree of the Court below, and send back the case for a decision on the merits, having regard to the issues in the Court below other than No. 1. Costs to abide the result.

Decree reversed.

APPELLATE CIVIL.

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

1888.
March 6.

BA'I NARMA'DA, (ORIGINAL PLAINTIFF), APPELLANT, *v.* BHAGWANTRA'I AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Mayukha—Stridhan—Inheritance—Property given to a woman by a stranger—Devolution of such property—Daughter's daughters not entitled to it—Son's widow preferred as gotrája sapinda.

By the law of inheritance laid down in the Mayukha, a house given to a married woman by a stranger to the family and her own earnings devolve on her death as if she had been a male. The daughter-in-law of the deceased owner succeeds, therefore, in preference to the daughters of a deceased daughter.

THIS was a second appeal from a decision of W. H. Horsley, Acting Assistant Judge at Broach, confirming the decree of Ráv Sáheb Chandulál M., Subordinate Judge at the same place. In 1881 one Rájkore, the widow of one Keshavrám, died at Broach possessed of a house, which had been given to her by a *yajmán*, and of a sum of money deposited in the Savings Bank consisting of fees which had been paid to her by *yajmáns*. Her son Dhaneshwar married the plaintiff Bái Narmáda, and died two years after his marriage. Her daughter Rewá was married to the defendant Bhagwantrái. Rewá predeceased her mother Rájkore, who died, as above stated, in 1881. On her death the defendant Bhagwantrái, (her son-in-law), took possession of the house, and withdrew the money from the Savings Bank, apparently on behalf of his minor daughters.

In 1883 the plaintiff Bái Narmáda, (the daughter-in-law of Rájkore), sued the defendant to recover possession of the house and the money.

* Second Appeal, No. 747 of 1885.