

Of course documents which require registration, and are unregistered, may be admissible in evidence for some purposes, and not admissible in evidence for other purposes. An unregistered mortgage-bond for more than one hundred rupees may be admissible in evidence to prove the simple debt or a personal obligation, but it is inadmissible in evidence to prove any right to the property affected by the instrument—*Ulfatunnissa v. Hosainkhán*<sup>(1)</sup>; *Tukárám v. Khandoji*<sup>(2)</sup>; *Sangáppa v. Bassáppa*<sup>(3)</sup>; *The Bengal Banking Corporation v. Mackertich*<sup>(4)</sup> and *Faki v. Khotu*<sup>(5)</sup>. These cases do not help the appellant, inasmuch as he seeks to use the *karárnáma* for the purpose of claiming the whole property for himself. He seeks no personal remedy. Under these circumstances the appellant's chief contention before us must be disallowed. As the contract was reduced to writing, no secondary evidence about its terms was admissible.

We accordingly confirm the decree of the lower Court with costs.

*Decree confirmed.*

(1) I. L. R., 9 Cal., 520.

(3) 7 Bom. II. C. Rep., 1.

(2) 6 Bom. II. C. Rep., O. C. J., 134.

(4) I. L. R., 10 Cal., 315.

(5) I. L. R., 4 Bom., 591.

## APPELLATE CIVIL.

*Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Parsons.*

GANESH MAHA'DEO BHA'NDA'RKAR AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, v. RA'MCHANDRA SAMBHA'JI MHA'SKAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

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*Limitation Act (XV of 1877), Sch. II, Art. 137—Mortgage—Mortgage of joint property—Share of co-owner sold in execution of decree—Subsequent sale of the mortgaged property by all co-owners—Redemption of mortgage—Suit for partition and redemption by purchaser at Court sale—Adverse possession.*

Three undivided brothers (Bábáji, Rámchandra and A'tmárám) mortgaged part of their joint property (plot 1) in 1870 and the rest (plot 2) in 1874. In 1875 Bábáji's share in both plots was sold in execution of a decree against him and was purchased by the plaintiff. In 1877 Bábáji and his two brothers sold plot 1 to the defendants No. 3-6, who at once paid off the mortgage of 1870 and took possession. On the

\* Second Appeal, No. 658 of 1893.

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11th February, 1877, the three brothers paid off the mortgage of 1874 of plot 2 and in the same month mortgaged that plot to the defendants with possession. On 26th August, 1890, the plaintiff sued for possession of Bábáji's share by partition and redemption if necessary.

*Held*, that the suit was barred by article 137 of the Limitation Act (XV of 1877). Bábáji became entitled to possession of his share of plot 1 in 1877 when the mortgage of 1870 was paid off by the defendants, and their possession had been since then adverse to the plaintiff. As to plot 2, Bábáji had become entitled to possession of his share therein on the 11th February, 1877, when the mortgage of 1874 was redeemed.

*Rámchandra v. Suddishin* (1), *Bháudin v. Shaik Ismáíl* (2), *Faki Abás v. Faki Nurudin* (3) and *Náro v. Rágho* (4) referred to.

SECOND appeal from the decision of T. Walker, Assistant Judge of Ratnágiri.

Suit for partition and for possession of one-third share of two parcels of land purchased by the plaintiff at an execution sale under a decree against one Bábáji, a joint owner

Defendants Nos. 1 and 2 were brothers of Bábáji. Defendant No. 3 (it was alleged) was a purchaser of one of the plots and a mortgagee of the other. Defendants Nos. 4, 5 and 6 were brothers of defendant No. 3.

The two plots of land had belonged to Bábáji and his brothers Rámchandra and Atmárám (defendants Nos. 1 and 2.)

On 30th July, 1870, they mortgaged one plot to Anant Bápuji Vaze and on the 23rd January, 1877, they sold their equity of redemption therein to defendants Nos. 3 to 6. On the 4th May, 1877, these defendants paid off Anant's mortgage of 1870 and continued in possession up to the date of suit.

The other parcel of land had been mortgaged by the three brothers on the 6th May, 1874.

On the 9th March, 1875, Bábáji's right, title and interest in both parcels of land were sold to the plaintiff in execution of a decree against him.

On the 11th February, 1877, the three brothers (Bábáji and defendants Nos. 1 and 2) paid off the mortgage of 6th May, 1874,

(1) I. L. R., 11 Bom., 22.

(2) I. L. R., 11 Bom., 42.

(3) I. L. R., 16 Bom., 191.

(4) P. J., 1892, p. 412.

and on the 28th February, 1877, they again mortgaged it to defendants Nos. 3 to 6.

The plaintiff now sued for possession of Bábáji's share by partition and redemption if necessary. The suit was originally filed on the 2nd January, 1889, and amended by adding the plaintiff's brother as co-plaintiff and by joining the defendants Nos. 4, 5 and 6.

The defendants (*inter alia*) pleaded that the claim was barred by limitation.

The Subordinate Judge held that the suit was barred under article 137 of Schedule II of the Limitation Act (XV of 1877) not having been filed within twelve years of the dates (11th February, 1877, and 4th May, 1877,) on which the judgment-debtor Bábaji was first entitled to possession.

The Assistant Judge confirmed the decree.

The plaintiff appealed to the High Court.

*Inverarity* (with *Vásudeo G. Bhándárkar*) for the appellants (plaintiffs):—We purchased Bábáji's rights in 1875 and thereupon we took his place and became owners of his undivided share. It was then liable to the mortgage of July, 1870, and in our hand as purchasers it remained liable. Bábáji joined in the sale to defendants Nos. 3 to 6 on the 23rd January, 1877, but as his share was then vested in us it did not pass to them by that sale. On the 4th May, 1877, defendants Nos. 3 to 6 paid off the mortgage of July, 1870. The only effect of that was that the plaintiff when claiming possession of Bábáji's share would have to pay one-third of the mortgage-debt to the defendants instead of to the original mortgagees. They became the mortgagees of the share. Their possession as mortgagees was not adverse to Bábáji, and could not, therefore, be adverse to the plaintiff who had purchased his rights.

As to the second parcel of land which was mortgaged in 1874, the three brothers redeemed it on the 11th February, 1877, and mortgaged it again to the defendants Nos. 3 to 6 on the 28th February, 1877. But Bábáji's share was at that time vested in the plaintiff—nothing passed to the defendant. Bábáji by re-

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deeming only obtained a right to claim the amount which he paid, and he could only give the defendants the same right. Neither Bábáji nor the defendants have ever had adverse possession of the share. Article 144 of the Limitation Act (XV of 1877) and not article 137 is applicable. He cited *Náro Shiváji v. Rágho Govind* <sup>(1)</sup>; *Faki Abás v. Faki Nurudín* <sup>(2)</sup>; *Rámchandra v. Sadáshiv* <sup>(3)</sup>.

*Máneksháh J. Taleyárhán* for the respondents (defendants Nos. 3 to 6):—The suit was not properly constituted until amended on 26th August, 1890. As to the plot which we bought from the three brothers on the 23rd January, 1877, we became owners of it by the purchase, and as owners on the 4th May, 1877, we paid off the mortgage of July, 1870. Our possession has been adverse ever since.

As to the second parcel mortgaged to us on the 28th February, 1877, Bábáji was then in adverse possession, having paid off the previous mortgage, and our possession as his mortgagees has also been adverse. He cited *Rámchandra v. Sadáshiv* <sup>(3)</sup>; *Datto Nárasinh v. Bábáji* <sup>(4)</sup>.

PARSONS, J.:—The two parcels of land in dispute were originally owned by one Bábáji and the defendants Nos. 1 and 2 in equal shares. On the 9th March, 1875, the plaintiff bought at an execution sale the right, title and interest of Bábáji therein, and his present suit, brought on the 26th August, 1890, is for possession of that share by partition and redemption if necessary. The following facts are material.

One of the parcels had been mortgaged by Bábáji and defendants Nos. 1 and 2 to one Vaze with possession on the 30th July, 1870. Bábáji and the defendants Nos. 1 and 2 sold the equity of redemption of it on the 23rd January, 1877, to the defendants Nos. 3 to 6, and they on the 4th May, 1877, paid off Anant Bápuji Vaze, and have since been in possession. They thus claim title to Bábáji's share by more than twelve years' adverse possession.

(1) P. J., 1892, p. 412.

(2) I. L. R., 16, Bom., 191.

(3) I. L. R., 11 Bom., 422.

(4) P. J., 1894, p. 149.

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It is, however, argued that the redemption of the mortgage by the defendants Nos. 3 to 6 was really a redemption by two out of three co-sharers, since Bábáji's title had vested in the plaintiff, and the defendants Nos. 3 to 6 had acquired the title of the defendants Nos. 1 and 2 only, and that the plaintiff can now come in and claim Bábáji's share of the land on payment of his share of the mortgage-money. The decisions in *Rámchandra v. Sadáshiv* <sup>(1)</sup>, *Bháudén v. Shekh Ismáíl* <sup>(2)</sup>, *Faki Abús v. Faki Nurudin* <sup>(3)</sup> and *Náro v. Rágho* <sup>(4)</sup> are cited in support of the contention. We do not think, however, that the plaintiff, who is a purchaser at a Court sale in execution, can call in aid such decisions as these, which proceed on the assumption that the co-sharers are in amicable and harmonious relations with each other and would do nothing adverse to the interests of each other. Here the plaintiff as auction-purchaser was at arm's length with Bábáji and the defendants Nos. 1 and 2 from the date of the purchase. Their adverse holding is shown by their ignoring the purchase and by continuing to deal with the land as if it were still their own, and the possession of defendants Nos. 3 to 6 was clearly adverse both to Bábáji and to the defendants Nos. 1 and 2. As the judgment-debtor was out of possession at the time of the plaintiffs' purchase, he had, under article 137, twelve years within which to bring his suit for possession, reckoned from the time his judgment-debtor first became entitled to possession. Other conditions remaining the same, this would be when the mortgage to Vaze was redeemed. See *Vajerám v. Bháishankar* <sup>(5)</sup>. As plaintiff's suit for this land is not brought within twelve years of this time, it is, we think, time-barred.

The second parcel of land had been mortgaged by Bábáji and defendants Nos. 1 and 2 with possession on the 6th May, 1874. They redeemed this mortgage on the 11th February, 1877, and on the 28th February, 1877, they mortgaged the land to the defendants Nos. 3 to 6. It is clear that Bábáji became entitled to possession of his share of this land on the 11th February, 1877, and

(1) I. L. R., 11 Bom., 422.

(3) I. L. R., 16 Bom., 191.

(2) I. L. R., 11 Bom., 425.

(4) P. J., 1892, p. 412.

(5) P. J., 1888, p. 157.

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the plaintiff cannot claim a period of limitation and a right to redeem as if he were a party to the mortgage of the 28th February, 1877, or as if the defendants Nos. 1 and 2 were then mortgaging his share as his agents. The possession of Bábáji and of the defendants Nos. 3 to 6 as mortgagees would clearly be adverse to the plaintiff as the purchaser of the one-third share of Bábáji. See *Datto v. Bábáji* (1). The suit for this parcel is time-barred also.

We confirm the decree of the lower appellate Court with costs.

*Decree confirmed.*

(1) P. J., 1894, p. 140.

## APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice Parsons.*

CHAMANBU JA'VJE MAHOMEDALI BOHORI (ORIGINAL PLAINTIFF),  
 APPELLANT, v. MULTA'NCHAND SHIVRA'M (ORIGINAL DEFENDANT),  
 RESPONDENT.\*

*Registration Act (III of 1877); Sec. 17, Cl. (b)—Indian Evidence Act (I of 1872), Sec. 32, Cl. (6)—Will—Statement—Words not purporting or operating to extinguish an interest in the present or in future:*

Section 17, clause (b) of the Registration Act (III of 1877) does not render a passage in a will inadmissible in evidence if the words of it do not purport or operate to extinguish an interest in the present or in future, but state only past facts. Such a statement would, if proved, be admissible also under section 32, clause (6) of the Indian Evidence Act (I of 1872).

SECOND appeal from the decision of S. Hammick, District Judge of Ahmednagar, confirming the decree of Ráo Bahádur G. A. Mánkar, First Class Subordinate Judge.

The plaintiff sued to obtain a declaration that a certain house which she had obtained from her husband as dowry was not liable to attachment by the defendant in execution of a decree against her sons and grandsons.

The defendant contended that the house belonged to his judgment-debtors and not to the plaintiff.

\* Second Appeal, No. 555 of 1893.