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 IN RE
 CHOTALAL
 MATHURADAS.

Chapter IV. It was a mere departmental inquiry held in order to ascertain whether there was any truth in the charge of bribery laid against Chotalal such as would justify the Collector in taking action under section 32 of the Code. If a formal or summary inquiry was intended, such would certainly be stated in section 33, but neither that section nor any other section of this chapter mentions the nature of the inquiry. It must, therefore, be held to be an ordinary inquiry falling within the provisions of section 197. As such, it would not be a judicial proceeding and the office of the authority holding the inquiry would not be a Court.

No sanction, therefore, for prosecution is required under section 195 (b) of the Code of Criminal Procedure.

We dismiss the application and return the papers in all the three cases, and the applications will be struck off as dismissed.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.

SHIVJIRAM SAHEBRAM MARWADI (ORIGINAL PLAINTIFF), APPELLANT,
 v. WAMAN NARAYAN JOSHI (ORIGINAL DEFENDANT), RESPONDENT.*

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 September 20.

Lis pendens—Mortgage—Decree on mortgage—Sale of mortgaged land pending proceedings in execution of decree.

On the 22nd August, 1882, Yesu and Krishna mortgaged certain land to the plaintiff by an unregistered mortgage. On the 17th May, 1884, Yesu alone mortgaged the same land to the defendant. This mortgage was duly registered. Subsequently to the date of the defendant's mortgage the plaintiff sued Yesu and Krishna on his mortgage, and on 26th August, 1884, he got a decree for the sale of the mortgaged property. On 1st November, 1884, he applied for execution of his decree, and in August, 1885, the execution sale took place and the property was sold to one Dagdu, who was the plaintiff's nominee. Meanwhile, however, and pending the plaintiff's execution proceedings, Yesu and Krishna on the 14th March, 1885, sold the property to the defendant by a registered deed of sale. The plaintiff now sued the defendant for possession.

Held (1) that the sale to the defendant on the 14th March, 1885, pending the plaintiff's execution proceedings was a sale *pendent: lit:* and void as against the plaintiff.

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(2) That the plaintiff as purchaser at the Court's sale in August, 1885, took the property subject to the defendant's mortgage of Yesu's share to the defendant in 1884, but free from the effect of the subsequent sale by Yesu and Krishna to the defendant.

(3) As this was a suit for possession, and as Yesu's share had been mortgaged to the defendant with possession, the plaintiff was only entitled to joint possession of the property with the defendant. He could file a separate suit to redeem defendant.

SECOND appeal from the decision of Ráo Bahádur D. G. Gharpure, additional First Class Subordinate Judge of Násik with appellate powers, reversing the decree of Ráo Sáheb L. K. Nulkar, Joint Second Class Subordinate Judge.

Suit for possession of land. Yesu and Krishna were the original owners of the land; and on the 22nd August, 1882, they mortgaged it to the plaintiff for Rs. 50 by an unregistered mortgage.

On 17th May, 1884, Yesu alone mortgaged the land to the defendant for Rs. 50 with possession. This mortgage was registered on the 12th June, 1884. As to Yesu's interest it, therefore, took priority under section 50 of the Registration Act (III of 1877).

Subsequently to the date of the defendant's mortgage the plaintiff sued Yesu and Krishna on his mortgage. On 26th August, 1884, he got a decree, and the mortgaged property was ordered to be sold.

On the 1st November, 1884, the plaintiff applied for execution of his decree, and after some delay in the proceedings the property was sold in August, 1885, to one Dagdu, who was the plaintiff's nominee.

Meanwhile, and pending the execution proceedings which resulted in the sale of the property under the plaintiff's decree, Yesu and Krishna on 14th March, 1885, sold the property to the defendant by registered deed of sale.

The plaintiff now sued the defendant for possession.

The lower Court dismissed this suit.

The plaintiff preferred a second appeal.

Manekshah J. Taleyarkhan, for the appellant (plaintiff).

Mahadeo V. Bhat, for the respondent (defendant).

FARRAN, C. J.:—The plaintiff, who is the transferee of one Dagdu, the purchaser at a Court's sale of the land in question, sued to recover possession of it from the defendant.

The original owners of the land were Yesu and Krishna. On the 22nd of August, 1882, they mortgaged it to the plaintiff for Rs. 50. This mortgage was unregistered. On the 17th May, 1884, Yesu alone mortgaged the land to the defendant for Rs. 50, and his (the defendant's) mortgage was registered on the 12th June following. This mortgage, which the Subordinate Judge considered to have been sham and colorable and passed without consideration to defeat the plaintiff's mortgage, has been upheld by the appellate Court as genuine and *bond fide*, and we must deal with it as such. It had, therefore, so far as Yesu's interest in the land is concerned, priority over the plaintiff's mortgage under section 50 of the Registration Act, 1877.

Some time about the date of the defendant's above mortgage—the lower appellate Court thinks after its execution—the plaintiff brought a suit upon his mortgage against Yesu and Krishna for the purpose of bringing the mortgage property to sale and realising his mortgage-debt. A decree was passed in that suit for the plaintiff on the 26th August, 1884, in the usual form, and the mortgaged property was ordered to be sold. On the 1st November, 1884, the plaintiff applied by darkhast for execution of his decree, and the usual proceedings ensued. Some delay occurred in bringing the property to sale, but it was eventually sold on the 22nd or 25th August, 1885 (the actual date is not clear) to Dagdu, the plaintiff's nominee.

Meanwhile, during the period when the plaintiff was engaged in bringing the property to sale, Yesu and Krishna on the 14th March, 1885, sold the property to the defendant. The deed of sale was subsequently registered.

It is objected that the defendant could take nothing under that sale, for two reasons:—

(1) Because the plaintiff's decree came under section 50 of the Registration Act (III of 1877) in competition with, and being prior in point of time defeated, the defendant's subsequent sale-deed.

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(2) Because the plaintiff's suit against Yesu and Krishna in respect of this property was, at the date of the sale by them to the defendant, still pending, and the defendant took the property under his sale-deed subject to the ultimate result of the plaintiff's suit.

The law upon the subject of *lis pendens* was considered by Sargent, C. J., in *Venkatesh Govind v. Maruti*⁽¹⁾. The ground of the actual decision in that case was that when a decree had been obtained upon an unregistered mortgage, directing that the plaintiff should recover the mortgage-debt "on the liability of the lands mentioned in the plaint," and no steps were taken under the decree for several years, the *lis pendens* was at an end. In the previous case of *Kanu Khandu v. Krishna Bhulaji*⁽²⁾ it had been decided that a decree obtained upon an unregistered mortgage did not operate to give such instrument priority over a subsequent purchaser at a Court's sale with possession. That decision was, however, passed in reference to the registration law as it existed prior to the Registration Act of 1864, and the doctrine of *lis pendens* was not relied upon in it.

In neither of the above cases was the question actually decided whether the doctrine of *lis pendens* applied to protect a plaintiff actively seeking to bring the mortgaged property to sale under a decree which he has obtained upon his mortgage, from the effect of an alienation by the judgment-debtor. If in taking such steps the property is attached, section 276 of the Civil Procedure Code (Act XIV of 1882) effectually secures the plaintiff, but in the present case though the plaintiff sought to have the property attached, the Court considered that such action was unnecessary, as the decree directed a sale in default of payment of the mortgaged property, and no attachment in consequence was levied upon the land. The plaintiff has, therefore, to rely upon the *lis pendens* doctrine.

Now the general rule of law is that the *lis pendens*, except in administration suits and suits for an account and in suits of a similar nature in which the decree is the inception of subsequent proceedings, ends with the decree. This was laid down by

(1) I L. R., 12 Bom., 217.

(2) 5 Bom. H. C. Rep. A C. J. p. 147.

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Lord Hardwicke in *Worsely v. Earl of Scarborough*⁽¹⁾ and was recognised by Sir Charles Sargent, C. J., in the above cited case of *Venkatesh v. Maruti (supra)*. In *Kinsman v. Kinsman*⁽²⁾, Lord Lyndhurst says: "After decree and before execution it was not pretended that *lis pendens* could any longer exist." The question would, therefore, seem to come to this. Do the execution proceedings in a case like the present, revive or give continuance to the *lis pendens*? That question was answered in the affirmative in *Raj Kishen Mookerjee v. Radha Madhub*⁽³⁾. The dates there were as follows:—The defendant sued upon his mortgage bond in December, 1871, and obtained a decree upon it for sale of the mortgaged property in February, 1872. A few days before the 18th April, 1872, the property mentioned in the mortgage was attached under the defendant's decree and it was sold in the month of May, 1872, when the defendant himself purchased it. That was the defendant's title. A creditor of the mortgagor attached the same property on the 7th November, 1871, under a money decree, and on the 18th of April, 1872, brought it to sale, when the plaintiff became the purchaser. It was held that the plaintiff's purchase was a purchase *pendente lite*. I have stated the above dates and facts partly from the above report and partly from the judgment of the Privy Council in the case next to be referred to. That is the case of *Radhamadhub v. Manohur*⁽⁴⁾, and though the decision in it proceeded upon another ground, their Lordships expressed their concurrence in the judgment of the Calcutta High Court in the above cited decision in unequivocal language. Sir Richard Couch in his judgment in *Raj Kishen Mookerjee v. Radha Madhub*, while admitting that there was no English precedent for his decision, considered that the principle laid down in *Bellamy v. Sabane*⁽⁵⁾, that "the doctrine (of *lis pendens*) is not founded upon any peculiar tenets of a Court of equity as to constructive notice, but prevails alike in law and equity resting on this foundation that it would be impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail", was applicable to proceedings to

(1) 3 Atk., 392.

(3) 21 Cal. W. R., 349.

(2) 1 R. and M., 617.

(4) L. R., 15 Ind. Ap., 97.

(5) 1 De G. and Jo., 566.

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realize a mortgage after a decree for sale. This case was followed in *Jharoo v. Raj Chunder*⁽¹⁾.

These Calcutta authorities apply to the case before us, and we think that we ought to follow them approved, as in principle they have been approved, by their Lordships of the Privy Council. Though they are not entirely consonant with the remarks of Sargent, C. J., in the earlier portion of his judgment in *Venkatesh v. Marubi*, they are quite consistent with the decision in that case. They were, moreover, not brought to the notice of the Court in that case and were not considered by it.

Having come to this conclusion upon the second of the above objections to the decree, it becomes unnecessary for us to consider the first objection. Had we to determine it, we should probably have felt it desirable to refer the matter to a Full Bench.

The result is that the plaintiff as purchaser at the Court's sale takes the property subject to the defendant's mortgage over Yesu's share, but free from the effect of the subsequent sale by Yesu and Krishna to the defendant. As this is only a suit for possession, and as the defendant's mortgage is with possession, plaintiff is entitled only to joint possession with the defendant Waman. He can, if so minded, file a separate suit to redeem the defendant Waman. The decree will be drawn up accordingly.

Decree varied as above with costs in the lower appellate Court, and each party to bear his own costs in this Court.

Decree varied.

(1) I. L. R., 12 Cal., 299 at p. 302.