

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

NARBHERAM (ORIGINAL OPPONENT), APPELLANT, v. THE COLLECTOR
OF BROACH (ORIGINAL APPLICANT), RESPONDENT.*

1897.

June 15.

Bhāg—Bhagdari Act (Bom. Act V of 1862), Sec. 2—Sale of a portion of a bhāg in execution of a decree—Process for sale—Collector's right to get the process quashed.

The appellant was the mortgagee of a portion of a *bhāg* under a mortgage dated 1880, and in a suit brought upon the mortgage obtained a decree for sale of the mortgaged property. An attachment was issued and an order for sale was made. Thereupon the Collector applied, under section 2 of Bombay Act V of 1862, to set aside the attachment and order for sale.

Held, that the mortgage of a portion of a *bhāg* was unlawful under section 3 of the Act, and a process having been issued for sale of such portion, the Collector was entitled to have it quashed.

Ranchoddas v. Ranchoddas⁽¹⁾ distinguished.

SECOND appeal from the decision of C. Fawcett, Assistant Judge, F. P., of Broach.

One Hargovan Parshotum was the owner of a *bhāg* in the village of Asta.

In 1873 he sold a *gabhān* (or building site), which was appurtenant to his *bhāg*, to one Bhagvan, and in 1880 he mortgaged the remaining portion of the *bhāg* to one Narbheram Sadaram.

In 1888 Narbheram sued upon the mortgage and he having died, his heirs obtained a decree for sale of the mortgaged property, and in execution the property was attached and ordered to be sold.

Thereupon the Collector intervened (in 1891) and applied to the Court, under section 2 of Bombay Act V of 1862, to set aside the attachment and order for sale, on the ground that the property attached was only a portion of a *bhāg* and did not include the *gabhān* which was appurtenant to it.

The execution creditors contended that the *gabhān* in question was no part of the *bhāg*; that the judgment-debtor had no title to the *gabhān*; that the whole of his interest in the *bhāg* was attached, and that the attachment was not illegal.

* Second Appeal, No. 124 of 1897.

(1) I. L. R., 1 Bom., 581.

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The Subordinate Judge of Anklesvar found that the *gabhn* was part of Hargovan's ancestral *bhág*; that he had sold the *gabhn* in 1873 in contravention of the provisions of Bombay Act V of 1862; and that as the *gabhn* was not included in the property attached, the attachment was illegal. He, therefore, set aside the attachment and order for sale, and his decision was confirmed, on appeal, by the Assistant Judge of Broach.

The decree-holders thereupon preferred a second appeal to the High Court.

Manekshah Jehangirshah for appellants.

Ráo Bahádur *Vasudev J. Kirtikar*, Government Pleader, for respondent.

PARSONS, J.:—The appellant sought to have a portion of a *bhág* sold in execution of a decree on his mortgage. At the instance of the Collector taken under section 2 of the Bhagdari Act (Bom. Act V of 1862) the Court below set aside the process for sale.

It is argued before us that the lower Court was wrong, (1) because the Act does not apply to a sale under a mortgage, (2) because the mortgage was of the whole interest of the mortgager in the *bhág*. We think that neither of these arguments is sound.

In support of the first point, *Ranchodlas v. Ranchodlas*⁽¹⁾ is cited. No doubt there is a remark in that decision that the words "attachment or sale by the process of any Civil Court" in section 1 were intended to prevent attachment and sale under simple money decrees, and not to prevent the sale of mortgaged property in satisfaction of the mortgage-debt. But the Court there was dealing with a mortgage made before the Act was promulgated, and the remark must be confined to such. The words of section 2 of the Act are very wide, and section 3 declares that it shall not be lawful to mortgage any portion of a *bhág*. Under section 3, therefore, the mortgage in the present case was unlawful, and as there had been a process issued for the sale of a portion of a *bhág*, the Collector under section 2 was entitled to move the Court to get it quashed.

(1) I. L. R. 1 Bom., 581.

As to the second point. The mortgage may be of the whole interest of the mortgagor, but we do not see how this can possibly render it legal. The object of the Act is to keep a *bhāg* intact, and with that object it forbids the mortgaging of any portion of any *bhāg*. The mortgagor in the present case was, it is said, at one time the owner of the whole *bhāg*, but he sold a part of it to one Bhagvan in 1873 and he mortgaged the rest to the appellant in 1880. Both of these transactions were illegal under the Act, and the fact of the earlier transaction cannot possibly be held to validate the latter. The true and only test to apply to the case is to see whether what the appellant seeks now to have sold is a portion of a *bhāg* other than a recognised sub-division of such *bhāg*. Both the lower Courts find as a fact that it is, and, therefore, their decision on the law is correct. We confirm the decree with costs.

1897.

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OF BROACH.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

MANOCKJI DADABHAI v. THE BOMBAY TRAMWAY COMPANY.*

1896.

Tramways Act (Bom. Act I of 1874), Sec. 24—"Regulating the travelling"—
Meaning of the words—Regulation made under the section for regulating
the conduct of the Company's servants—Illegality of such regulation.

November 12.

The words "regulating the travelling" in section 24 of the Bombay Tramways Act (Bom. Act I of 1874) mean laying down rules as to how persons shall travel, that is to say, rules for the conduct and behaviour of the persons who travel, and cannot be held to include rules for the conduct of the Company's servants, prescribing what they shall do, or what they shall not do, in the matter, for instance, of issuing tickets.

Section 24 of Bombay Act I of 1874 authorises the Bombay Tramway Company to make regulations "for regulating the travelling in or upon any carriage belonging to them." Under this section the Company made the following regulation:—

"Any conductor who shall neglect to issue a ticket to a passenger, or shall issue to such passenger a ticket bearing a number other than one of the numbers contained in such books, or shall issue a ticket of a lower denomination than the amount of the fare, or non-consecutive in number, or a ticket other than the ticket provided by the Company for the journey to be travelled,—shall for every such offence be liable to a penalty not exceeding Rs. 25."

Held, that the regulation was *ultra vires*.

* Criminal Revision, No. 215 of 1896.