

sense of respondent's rights as a widow was the personal interests of the appellant No. 1. In view, therefore, regard that the breaking up of the family by partition was undesirable. The eldest widow's claims were somehow settled, and her assent was secured to the adoption several years before the respondent had any open differences with appellant No. 1. Under these circumstances, it is plain that the mere delay in giving effect to the legitimate power possessed by her, and her resorting to its exercise when the respondent threatened to break up the joint family, would not make the act either capricious or malicious, solely because it was effected after the institution of the application to sue in *forma pauperis*. The presumption in favour of the *bona fides* of the act would not be rebutted by this circumstance, or by the subsequent acts of alleged waste.

For these reasons we reverse the decree of the Assistant Judge, and restore that of the Subordinate Judge with costs on respondent.

Decree reversed.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Fulton.

CHUNILAL PREMJI MARWADI AND OTHERS (ORIGINAL PLAINTIFFS),
APPELLANTS, v. RAMCHANDRA AND OTHERS (ORIGINAL DEFENDANTS),
RESPONDENTS.*

1896.

April 17.

Registration—Registration Act (III of 1877), Sec. 50—Notice—Registration is notice only of registered documents, not of unregistered documents under which holders of registered documents derive their title—Priority.

The plaintiffs sued to recover possession from the defendants of certain land which they had purchased from one Ran by a registered deed of sale dated the 22nd August, 1882.

Ran had been given the land by one Harichand by a registered deed of gift dated 15th November, 1881.

Harichand, however, had purchased the land from one Vithoba on the 22nd March, 1876, and the deed of conveyance to him of that date was not registered.

* Second Appeal, No. 651 of 1895.

1896.

CHUNILAL

v.
RAM-
CHANDRA.

On the 2nd April, 1894, the land to the third defendant by a deed of that date.

The third defendant contended that the plaintiffs' title was based on an unregistered deed of the 23rd March, 1876, executed by Vithoba (father of his vendors), and that his (defendant's) purchase by registered deed dated 2nd April, 1894, had priority.

Held, that the plaintiffs' claim must be dismissed. They were mere strangers to the land, unless they could rely on the unregistered conveyance by Vithoba to Harichand of the 23rd March, 1876, but this conveyance had no effect when brought into competition with the registered conveyance to the third defendant of the 2nd April, 1894.

Though the register is notice of registered documents it is not notice of unregistered documents under which holders of registered documents derive title.

SECOND appeal from the decision of Arthur H. Unwin, District Judge of Násik, confirming the decree of the Subordinate Judge of Málegaon.

Suit for possession of land. The plaintiffs had bought the land in question from one Ran on the 22nd August, 1882, by a registered deed of conveyance.

Ran had been given the land by one Harichand and had a registered deed of gift from him dated the 15th November, 1881.

Harichand, however, had purchased the land from one Vithoba by an unregistered deed dated the 23rd March, 1876.

The first and second defendants were the sons of Vithoba and they sold the land to the third defendant by a registered deed dated 2nd April, 1894.

The third defendant contended that the plaintiffs' title ultimately rested on the unregistered deed of the 23rd March, 1876, executed by Vithoba (the father of his vendors) and that his (the third defendant's) registered deed of 2nd April, 1894, had priority to that previous unregistered deed of March, 1876.

The Subordinate Judge held that, under section 50 of the Registration Act, the registered sale-deed of defendant No. 3 (Exhibit 46) was entitled to priority over the plaintiffs' unregistered title-deed (Exhibit 29). He, therefore, dismissed the suit.

On appeal by the plaintiffs the Judge confirmed the decree.

The plaintiffs preferred a second appeal.

... for the respondents (defendants).

FAL...:—We confirm the decree of the District Judge in this case on the ground that the registered deed dated 2nd April, 1894, (Exhibit 46) executed by Vithoba's sons in favour of the defendant No. 3 under section 50 of the Registration Act (III of 1877) takes effect as regards the property comprised therein, being the property in suit, against the unregistered conveyance dated 23rd March, 1876, (Exhibit 29) by Vithoba in favour of Harichand, who by deed of gift on the 15th November, 1881, (Exhibit 32) gave the property to Ran, who sold it by deed dated 22nd August, 1882, (Exhibit 36) to the plaintiff.

It is contended that the deeds of 2nd April, 1894, and 23rd March, 1876, Exhibit 46 and Exhibit 29, do not come into competition, as the former was executed by the father Vithoba, and the latter was executed by his sons and heirs. The contention ought not to prevail. The title of Vithoba descended upon his sons, and it is the same title which is conveyed by both documents. That is sufficient—*Makandas v. Shankardas*(¹).

It is on this argued that the registered documents, dated respectively 15th November, 1881, and 22nd August, 1882, Exhibit 32 and Exhibit 36, come into competition with, and being prior in date to the deed of 2nd April, 1894, Exhibit 46, take precedence over it. We do not think that is so. The plaintiff and his grantors are mere strangers to the land, unless they can rely upon the unregistered conveyance by Vithoba to Harichand in March, 1876, Exhibit 29: but this conveyance, as we have stated, does not take effect upon the property when brought into competition with the registered conveyance of April, 1894, Exhibit 46. The grantees of Harichand stand in his shoes, and if he could not succeed against the defendant No. 3, neither, we think, can they.

As to the argument based upon the law as to notice laid down in *Dundaya v. Chenbasapa*(²) that the defendant No. 3 had notice through the registered documents of November, 1881, and August 1882, Exhibit 32 and Exhibit 36, of the unregistered document of March, 1876, Exhibit 29, it is ingenious, but, we think, un-

(1) 12 Bom. H. C. Rep., 241.

(2) I. L. R., 9 Bom., 427.

sound. The register, which it contains, but it would be pushing constructive notice beyond all bounds to hold that it is notice of the unregistered documents under which the holders of registered documents derive their title.

Lastly, it is contended that the alleged constructive possession of Harichand of the premises under the kabuláyat, Exhibit 41, gave constructive notice of Harichand's purchase to the defendant No. 3. That kabuláyat, however, if genuine, was for a year, and expired in 1879, so that as a fact the sons of Vithoba were not holding as tenants under it in 1894; but even if they were, they were in apparent possession, and the constructive possession, which would be in Harichand or his grantees by reason of the kabuláyat, was not possession of such a nature as to be notice to the defendant No. 3 of their prior title—*Moreshwar v. Dattu*⁽¹⁾.

Decree confirmed with costs.

Decree confirmed.

(1) I. L. R., 12 Bom., 569.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Fulton.

1896.
April 15,

LAKSHMANDAS RAGHUNATHDAS AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, v. JUGALKISHORE (ORIGINAL DEFENDANT), RESPONDENT.*

Trustee—Charity—Suit against de facto manager or trustee by de jure trustees—Dismissal of such suit as barred by limitation—Subsequent suit against same defendant by Advocate General under Section 539 of Civil Procedure Code—Such suit not affected by first suit—Civil Procedure Code (Act XIV of 1882), Sec. 539—Res judicata.

In 1887 certain persons alleging that they had been appointed trustees of a temple and its property by its founder Purshotam, brought a suit to evict Purshotam's son from the premises, alleging that he had been their gumaista, but that they had dismissed him and that he refused to give up the property. The High Court dismissed that suit on the ground that it was barred by limitation.

*Appal, No. 139 of 1895.