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the conclusion of his judgment in *Janki v. Nand Ram*, seem also to be very appropriate in the case of the widow of a predeceased son dying in union with his father.

On the whole, therefore, we must hold that the respondent's right to claim maintenance must be allowed as against the appellant, her mother-in-law, as in her hands the property is subject to the legal obligation of maintaining the widowed daughter-in-law whose husband was united in interest with his father.

We dismiss the appeal with costs on the appellant.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

RAMCHANDRA VITHAL RAJADHIKSHA AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, v. SHEIKH MOHIDIN (ORIGINAL PLAINTIFF), RESPONDENT,*

AND

SHEIKH MOHIDIN (ORIGINAL PLAINTIFF), APPELLANT, v. RAMCHANDRA VITHAL RAJADHIKSHA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Limitation Act (XV of 1877), Sec. II, Art. 134—Mortgage—Purchaser from mortgagee—Necessity of possession in order to validate transaction as against original mortgagor.

A person purchasing or taking a mortgage from a mortgagee believing that he is getting a good title must have possession of the property for the statutory period in order to validate the transaction as against the original mortgagor under article 134 of the Limitation Act (XV of 1877).

SECOND appeal from the decision of Thakurdas Mathuradas, Assistant Judge of Ratnagiri, amending the decree of Ráo Sáheb Vishvanath Vaikunth Vagh, Subordinate Judge of Vengurla.

Suit for redemption. The lands in question belonged to the Renges, who mortgaged them with possession to the Rajadhiakshas in 1840, 1856, 1859. The Rajadhiakshas divided the mortgaged lands among themselves, and Balaji Rajadhiaksha in September and October, 1877, mortgaged his share of them to one Kamat (defendant No. 6). Balaji, however, retained possession, but, after

* Cross Second Appeals, Nos. 493 and 492 of 1898.

his death, his widow mortgaged the same lands again to Kamat (defendant No. 6), and gave him possession.

The plaintiff was the purchaser of the equity of redemption in these lands from the Renges, and in 1890 he brought this suit for the redemption of the mortgages of 1840, 1856 and 1859.

It was contended on behalf of Kamat (defendant No. 6) that the plaintiff could not recover possession of the land without paying off his two mortgages of 1877 as well as the earlier mortgages which he sought to redeem, and he relied on article 134 of the Indian Limitation Act (XV of 1877). The lower Courts disallowed this contention on the ground that Kamat had not obtained possession more than twelve years before suit, and held that the plaintiff might redeem the early mortgages without also redeeming the mortgages to Kamat.

The defendants appealed.

Ghanasham N. Nadkarni for appellants (defendants):—We knew nothing of the earlier mortgages. We are *bona fide* purchasers for value without notice. The plaintiff cannot take the land from us without paying what we have advanced on its security. Article 134 of the Limitation Act does not require that the purchaser should have possession from the date of the purchase. We took actual possession in 1883, but previously to that our mortgagors held possession under *kabulāyat*. Their possession was our possession—*Yesu Ramji v. Balkrishna Lakshman*⁽¹⁾; *Maluji v. Fakirchand*⁽²⁾.

H. C. Coyaji, for respondent (plaintiff):—The lower Courts have held that the defendant as mortgagee had no possession until 1883. That is a matter of fact, and the finding must be accepted. Article 134 does not apply except where possession has been enjoyed. It refers to a suit to recover possession. Possession is implied. Possession for twelve years gives the purchaser a right as against the original owner, but if the purchaser has not had possession for that term, the original owner need not regard the transactions at all—*Radanath v. Gisborne*⁽³⁾; *Muthu v. Kambalinga*⁽⁴⁾.

(1) (1891) 15 Bom., 583.

(2) (1896) 22 Bom., 225.

(3) (1871) 14 Mad. I. A., 1.

(4) (1889) 12 Mad., 316.

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RANADE, J. :—Most of the points raised in these cross appeals were disposed of by us in the course of the arguments urged on both sides. Mr. Ghanasham, pleader for the appellants in Appeal No. 493, however, laid considerable stress on the point of limitation. The facts relating to this contention, as they have been found proved by the Courts below, may be thus briefly stated.

The lands in dispute were proved to have belonged to the Renges, who mortgaged them with possession to the Rajadhiakshas in 1840, 1856 and 1859 (Exhibits 145, 16, 147). The Rajadhiakshas divided the mortgaged lands among themselves, and Balaji Rajadhiaksha mortgaged his share in these lands and other property to the original defendant No. 6, Kamat, in September and October, 1877, under two separate deeds, Exhibits 309, 310, and the same Rajadhiaksha's widow passed a third mortgage-bond in January, 1883 (Exhibit 311). The lower appellate Court has found that the first two mortgages by Rajadhiaksha to Kamat were without transfer of possession till 1883, till which time the lands were in the possession of the Rajadhiaksha.

It was, however, contended on behalf of this appellant (original defendant No. 6) that he had a right to require the respondent-plaintiff, who sued for the redemption of the original mortgages effected by the Renges with the Rajadhiaksha, to redeem also the later two mortgages of 1877 effected by the Rajadhiaksha with Kamat. It was contended that under article 134 of the 2nd Schedule of the Limitation Act, Kamat was a purchaser for value from the Rajadhiaksha without notice of the prior mortgage, and as the mortgages of 1877 were passed more than twelve years before the suit of 1890, the respondent-plaintiff could not recover possession of the lands without paying these two Rajadhiaksha's mortgages as well as the earlier Renges' mortgages. A similar contention was raised on behalf of the other Kamat appellant, original defendant No. 16, whose mortgage-bond was passed in 1878. The lower appellate Court disallowed these contentions on the ground that as these two appellants did not obtain possession under their mortgages more than twelve years before suit, the respondent-plaintiff had a

right to redeem the lands from the mortgage-debt of Renge's bonds without being subject, at the same time, to redeem Rajadhiksha's mortgages.

Mr. Ghanasham contended that the lower appellate Court ought to have held that the two mortgages of 1877 of defendant No. 6 as also the mortgage of 1878 of defendant No. 16 were mortgages with possession, and that any how, as they were executed more than twelve years before the redemption suit, they were entitled to the protection of article 131 as being purchases for valuable consideration. His contention was that the limitation in such cases commences from the date of purchase (1877 and 1878), and that transfer of possession was immaterial, though in this case the Rajadhiksha had passed rent notes on the date of mortgage-bonds. The lower appellate Court has relied chiefly on the authority of the ruling in *Maluji v. Fakirchand*⁽¹⁾, in which it was laid down that until the defendants held possession under their mortgage for the full period of twelve years, the plaintiffs could disregard their mortgage and recover possession, notwithstanding its existence, by paying off the original mortgage. When the defendants Nos. 2 and 3 (in that case) had held possession under it for twelve years, article 131, coupled with section 28, would validate it, and the plaintiff would be debarred from recovering possession disregarding the later mortgagee's mortgage.

In the present case, the possession of the Kamat appellants has not ripened into adverse enjoyment for twelve years, so as to validate their mortgages, in a way to bind the respondent-plaintiff to redeem them. The case, therefore, clearly falls within the scope of the ruling referred to above.

It was, however, pressed upon us that the wording of the article takes no account of possession and speaks only of purchase, and as the Kamat purchases were more than twelve years old, the want of actual possession by them before 1883 was of no consequence. It thus becomes necessary to consider this point more fully in reference to the principle given effect to by the judicial enlargement of the scope of article 131, and the deci-

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sions passed upon that article. Article 134 relates to suits for recovery of possession of immoveable property which is bequeathed or conveyed in trust or mortgaged, and is afterwards purchased from the trustee or mortgagee for a valuable consideration. In so far as the article refers to trustees, it must be read along with section 10, which also relates to trustees, and permits *cestui que trust* to follow trust property in the hands of trustees, or their assigns (excepting assigns for valuable consideration). This exception has obvious reference to the same class of considerations as are given effect to in article 134 in respect of suits for possession. Unless the assignee for valuable consideration has possession, it is plain that trust property cannot be followed into his hands, and similarly, unless the purchase is with possession, the mortgagor owner has no notice, and no means of knowing any breach of the trust, and no suit can lie for recovery of possession from the alienee. The purchase generally must, therefore, be with possession. More especially must this be the case where the purchase is a purchase *sub modo*, and is, in fact, a mortgage as in this case.

In all the cases where the rights of purchaser have been given effect to, the purchasers or mortgagees had possession. This was the case in *Yesu v. Balkrishna*⁽¹⁾ where the status of mortgagees as purchasers under article 134 was first recognized. The same was the case in *Pandu v. Vithu*⁽²⁾, where the word "purchaser" was defined, in the words of their Lordships of the Privy Council in *Radanath Doss v. Gisborne and Co.*⁽³⁾, as one who purchases what is *de facto* a mortgage upon a representation, and in the belief that he is purchasing an absolute title. Possession was also admitted in the case of the auction purchase which was upheld in *Muthu v. Kambalinga*⁽⁴⁾. Both on principle and precedent it is thus clear that the purchaser from a mortgagee of what is represented and believed to be absolute right must be a purchaser with possession. His possession is an essential element of this purchase *sub modo*, which alone can make the purchase valid as against the true owner after twelve years' enjoyment.

(1) (1891) 15 Bom., 533.

(2) (1894) 19 Bom., 140.

(3) (1871) 14 M. I. A., 1.

(4) (1889) 12 Mad., 316.

This point becomes still more clear when it is borne in mind that the same article 134 refers to alienations by trustees. These, like alienations by mortgagees, are protected after twelve years' possession. In the case of alienations by trustees, unless there is a transfer of possession to the alienee, the transaction would be incomplete and of no effect against the *cestui que trust*. The ruling in *Maniklal v. Manchershhi Dinsha*⁽¹⁾ refers to such alienations by trustees. So far as that ruling related to the question of *bona fides*, article 134 has rendered all inquiry unnecessary, but the element of possession was then, as now, necessary to validate the purchase as against the true owner. The alienations of temple property, which were the subject of dispute in *Nilmony Singh v. Jagabandhu Roy*⁽²⁾ and *Sajedur Raja Chowdhuri v. Gour Mohun Das*⁽³⁾, also involved transfer of absolute right and possession. It is also clear that under English law (3 and 4 Vic., C. 27, Sec. 25, which corresponds to article 134), possession by the purchaser for valuable consideration for the statutory period of property conveyed in breach of trust is necessary to validate the trust as against the *cestui que trust*⁽⁴⁾. In English law, mortgages are effected in the form of purchases; and the law of trusts governs to a large extent the equitable relations between mortgagor and mortgagee. The Indian law has followed the English law in this respect, and this analogy of trusts makes it clear that when the purchaser from the mortgagee is under the belief that he is purchasing an absolute title, there must be an enjoyment of possession for the statutory period to validate his purchase as against the original mortgagor. The Courts below have, therefore, correctly applied the law, and we confirm the decree of the lower appellate Court. Costs in each appeal on the respective appellants.

Decree confirmed.

(1) (1876) 1 Bom., 269.

(3) (1897) 24 Cal., 418.

(2) (1896) 23 Cal., 536.

(4) Lowin on Trusts, p. 633, 5th Ed.

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