

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

1904.
July 20.

NARAYAN VENKAP SHETTI (ORIGINAL DEFENDANT NO. 2), APPELLANT,
v. LAXUMAN SHANTAYA KINI AND OTHERS (ORIGINAL PLAINTIFF
AND DEFENDANTS 1 AND 4), RESPONDENTS.*

*Registration Act (III of 1877), section 47—Registration—Date of operation—
Date of execution of the deed.*

On the 11th August, 1898, the defendant No. 1 passed to the plaintiff a *mulgeni* lease, which was registered on the 10th December, 1898. In the meanwhile the defendant No. 1 passed another *mulgeni* lease to the defendant No. 2 in respect of the same property on the 17th November, 1898, and got it registered on the 18th November, 1898. On the 5th December, 1898, the defendant No. 1 mortgaged the same property to the defendant No. 2; this deed of mortgage was registered on the 9th December, 1898. Defendant No. 2 obtained possession of the property. The plaintiff then sued to establish his *mulgeni* lease and to recover possession of the lands.

Held that the plaintiff was entitled to recover possession of the lands; for though his deed was registered after the defendant No. 2's deeds, yet the moment it was registered it had operation from the date of its execution by virtue of section 47 of the Registration Act (III of 1877).

Held, further, that it was immaterial whether the defendant No. 2's deeds were or were not accompanied by possession.

Kali Das Mullick v. Kamhya Lal Pandit⁽¹⁾ and *Bai Suraj v. Dalpatram Dayashanker*⁽²⁾ followed and applied.

SECOND APPEAL from the decision of M. R. Nadkarni, First Class Subordinate Judge, A. P., at Kárwár, confirming the decree passed by E. F. Rego, Subordinate Judge of Kunta.

Suit to recover possession of land.

The lands in dispute belonged to Shabaya Manjaya, defendant No. 1 (respondent No. 2).

On the 11th August, 1898, Shabaya passed a *mulgeni* lease in respect of the lands in favour of Laxuman Santaya Kini, plaintiff (respondent No. 1). This lease was registered on the 10th December, 1898.

In the meanwhile, on the 17th November, 1898, Shabaya passed another *mulgeni* lease in respect of the same lands in

*Second Appeal No. 221 of 1904.

(1) (1884) L. R. 11 I. A. 218,

(2) (1882) 6 Bom. 380.

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favour of Narayan Venkap Shetti, defendant No. 2 (appellant), and got the lease registered on the next day. On the 5th December, 1898, Shabaya mortgaged the lands to Narayan: this deed of mortgage was registered on the 9th December, 1898. Narayan obtained possession of the lands.

On the 21st January, 1899, the plaintiff (Laxuman Santaya) brought this suit to establish his *mulgeni* lease and to recover possession of the lands.

The Subordinate Judge decreed the suit in his favour. On appeal this decree was confirmed by the lower Appellate Court.

Narayan (defendant 2) appealed to the High Court, contending, *inter alia*, that the lower Court erred in holding that the plaintiff's lease had priority over that passed to defendant 2; and that there having been delay on the part of the plaintiff to present his lease for registration and the lease of defendant No. 2 having been previously registered, the maxims of equity applicable to the case would be "delay defeats equity" and "where there is equal equity law shall prevail."

Nilkant Atmaram, for the appellant.

G. S. Mulgaonkar, for the respondents.

CHANDAVARKAR, J.:—The facts necessary for the disposal of the point arising in this second appeal are shortly these:—

The 1st respondent, Lakshman Shantaya Kini, obtained the lands in dispute on a *mulgeni* lease, executed on the 11th of August, 1898, by the 2nd respondent, Shabaya Manjaya Shanbhog. The lease was registered on the 10th of December, 1898.

The appellant, Narayan Venkappa Shetti, obtained a *mulgeni* lease of the same lands on the 17th November, 1898, from the 2nd respondent, and it was registered on the 18th November, 1898.

The appellant further obtained a mortgage in respect of the lands from the 2nd respondent on the 5th December, 1898, and the mortgage-deed was registered on the 9th of December, 1898.

The question is whether the 1st respondent's deed has priority over the appellant's deeds.

The competition here is not between an unregistered and a registered deed. The respective deeds of both the parties being

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registered, the question of priority must be decided with reference to the provisions of section 47 of the Registration Act. That section provides that "a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration." Though, therefore, the 1st respondent's deed was registered after the appellant's deed, yet, the moment it was registered it had operation from the date of its execution, that being the date from which, according to the deed itself, the *mulgeni* title passed to the 1st respondent. His title having become legally complete and operative on that date by reason of the subsequent registration, there was no title which the appellant could take from the 2nd respondent, except such as he could obtain as a mortgagee of the 2nd respondent's right as *mulgar* or landlord.

This view is in accordance with the decisions of this Court in *Lalubhai Surchand v. Bai Amrit*⁽¹⁾ and *Sanlaya Mangarsaya v. Narayan*⁽²⁾. In the former case, West, J., in delivering the judgment of the Court, after pointing out that the competition there was not between a registered and an unregistered title but between two registered deeds, went on to say:—"Sections 48 and 50 of the Registration Act, therefore, do not operate. What is left is section 47, under which 'a registered instrument shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made.' The priority as between two instruments, such as those in the present case, is thus referred to their time of operation, apart from the Registration Act." In *Sanlaya Mangarsaya v. Narayan*⁽²⁾ Sargent, C. J., and Melvill, J., said:—"The Judge was wrong in attaching importance to the circumstance of the plaintiff's deed being registered subsequently to that of the defendant. As both deeds of sale were registered according to law, they would operate from their respective dates of execution as provided by section 47."

But it was contended before us that these two decisions were also authorities for the proposition that where two deeds of

(1) (1877) 2 Bom. 299 at p. 313.

(2) (1883) 8 Bom. 182 at p. 184.

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different dates are registered, the deed of a later date must prevail over that of the earlier date, if the former is accompanied by possession. No doubt that was the view taken by this Court in the two cases above cited. But that view was based upon the doctrine which prevailed in this Court upon the authority of the Full Bench ruling in *Bai Suraj v. Dalpatram Dayashankar*⁽¹⁾ until the Privy Council upset it, viz., that under the Hindu Law possession was necessary to complete a title by purchase. In *Kali Das Mullick v. Kanhya Lal Pandit*⁽²⁾, however, the Privy Council held that possession was not necessary, under the Hindu Law, to give validity to a contract of sale, and that the texts which relate to the transfer of possession (except in the case of gifts where it is necessary to give a complete title as against the donor) "have reference only to the comparative strength of a title with possession and a title without it." See *Ugarchand Manackchand and another v. Madapa*⁽³⁾ where Sargent, C. J., held that this decision of the Privy Council must be deemed to have overruled the Full Bench decision of this Court in *Bai Suraj v. Dalpatram Dayashankar*⁽⁴⁾.

It is, therefore, immaterial whether the appellant's deeds in the present case were accompanied by possession.

The lower Court was, therefore, right in holding that the 1st respondent's title prevailed over that of the appellant. The decree must, therefore, be confirmed with costs. The 1st respondent filed cross-objections which have not been urged and must, therefore, be rejected.

Decree confirmed.

(1) (1882) 6 Bom. 380.

(2) L. R., 11 I. A. 218.

(3) (1885) 9 Bom. 324.

(4) (1882) 6 Bom. 380.