

## APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

YESU RA'MJI KALNATH, DECEASED, BY HIS SONS AND HEIRS VISHRA'M YESU AND ANOTHER, (ORIGINAL PLAINTIFF), APPELLANT, v. BA' LKRISHNA LAKSHMAN AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.\*

1891.  
January 19.

*Mortgage by mortgagee—Suit for redemption by original mortgagor against mortgagee and sub-mortgagees—Adverse possession by sub-mortgagees—"Purchaser for value"—"Valuable consideration"—Section 5 of the Limitation Act (XIV of 1859)—Art. 134, Schedule II of the Limitation Act (IX of 1871)—Art. 134, Schedule II of the Limitation Act (XV of 1877).*

*Held*, that the expression "purchaser for valuable consideration," in article 134 of the Limitation Acts IX of 1871 and XV of 1877, includes a mortgagee as well as a purchaser properly so called.

*Seemle*.—The words "*bonâ fide*," which appeared in article 134, Schedule II of the Limitation Act (IX of 1871), were advisedly omitted from article 134, Schedule II of the Limitation Act (XV of 1877), to exclude the possible inference that absence of notice of the real owner's claim was necessary to enable a purchaser to avail himself of the article.

THIS was a second appeal from the decision of G. C. Whitworth, District Judge of Ratnâgiri.

The suit was filed on the 14th April 1885 to redeem lands mortgaged under a mortgage-deed dated May, 1825, by the plaintiff's grandfather, Fatji Dâdji Kalnâth, to the father of defendant No. 1, Râm Bâble Parab, for Rs. 94-9; the plaintiff alleged that by the terms of the mortgage the property was redeemable at any time on payment of the principal amount; that he was ready and willing to pay up the amount, but that the defendants would not restore the lands.

Defendants Nos. 1 and 2, (Râm Bâble Parab and Bâpu Lakshma Parab,) denied the mortgage, and alleged (*inter alia*) that the lands belonged to them, and that they had mortgaged the lands in question to defendants 15 and 18, in whose possession they had been for many years.

The Court of first instance passed a decree for the plaintiff. The District Court reversed that decision. In second appeal to the High Court the question arose as to whether article 134 of the Limitation Act applied to mortgagees.

\* Second Appeal, No. 537 of 1888.

1891.

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LAKSHMAN.

*Dáji Abáji Khare*, for the appellant, contended that article 134, Schedule II of the Limitation Act applies to purchasers for a valuable consideration, that is, to purchasers who have obtained an absolute right over the property, and not partial alienees, such as mortgagees—*Rádánáth Doss v. Gisborne & Co.*<sup>(1)</sup>.

*Ghanashám Nílkanth Nádkarni*, for the respondents (original defendants Nos. 15 and 18):—The question as to *bona fides* has been found in our favour by the lower Court. We are purchasers for value without notice of plaintiff's claim, and, therefore, our rights cannot now be disturbed. Article 134, Schedule II of the Limitation Act covers such a case. The words "purchaser for value" is a technical expression, and includes a mortgagee. Our mortgagors (defendants 1 and 2) treated with us as full owners of the property. Our mortgage-deeds mention them as full owners, and there was nothing to indicate that they had only a limited interest in the property. Our contention is fully supported by the Madras ruling quoted in the foot-note on page 103; Shephard on Limitation.

SARGENT, C. J., (after stating the facts continued):—The important question argued in this second appeal is whether article 134 of the Limitation Act (XV of 1877) is restricted to the case of purchasers properly so called, and does not apply to mortgagees. The expressions "purchaser for value" and "valuable consideration," which are used in section 5 of Act XIV of 1859 and article 134 of Acts IX of 1871 and XV of 1877, are well known as technical expressions which include a mortgagee as well as a purchaser properly so called. It is true that in *Rádánáth Doss v. Gisborne & Co.*<sup>(1)</sup> the Privy Council discussing section 5 of Act XIV of 1859 say "purchaser means purchaser according to the proper meaning of the word." But it is plain from what follows that the Privy Council mean by that expression a purchaser of the absolute title as distinguished from a mere assignee of the vendor's mortgage. Moreover, further on in their judgment the question is discussed as if it were a plea of a purchase for value in England which it is well known may be pleaded by a mortgagee. Although the application of

(1) 14 Moore's L. A. 1, at p. 15.

the article in the case of purchaser in the sense of a mortgagee may not be obvious in the case of a mortgagee as in that of a trustee we agree with the Madras Court in holding (see Shephard on the Limitation Act, p. 103) that the expression "purchaser for valuable consideration" is to be read in its technical sense. The District Judge has found that the defendants Nos. 15 and 18 had no notice that the plaintiff was the owner, and that Parab, (defendant No. 1) from whom they obtained their mortgage, was only himself a mortgagee. It is, therefore, not necessary to discuss the important question as to the necessity of the absence of such notice to enable a purchaser to claim the benefit of article 134 which is considered in *Bhagwán Sáhái v. Bhagwán Din*<sup>(1)</sup>. We may, however, draw attention (as has been frequently done in deciding difficult questions of construction arising on Acts of the Indian Legislature) to the last report of the Special Committee to whom the Bill was referred during the passing of the Act of 1887 through the Legislative Council (see Volume XVI, p. 466, of Proceedings of the Legislative Council), which points to the conclusion that the words "*bonâ fide*" were advisedly omitted from the article, to exclude the possible inference that absence of such notice was necessary to enable the purchaser to avail himself of the article.

Upon the whole we must confirm the decree, with costs.

*Decree confirmed.*

(1) I. L. R., 9 All., 97.

## ORIGINAL CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.*

BA'LKRIISHNA V. N. KIRTIKAR AND OTHERS, (ORIGINAL DEFENDANTS 2 TO 7), APPELLANTS, v. THE BANK OF BENGAL, (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

*Surety—Principal and surety—Guarantee—Discharge of surety—Concealment of material fact from surety—Contract Act (IX of 1872), Sec. 143—Further duties imposed on person for whom defendants were sureties.*

In August, 1881, the defendants became sureties to the Bank of Bengal for the due discharge by one Bháu Krishnaráv of the duties and liabilities of the office of *khajanchi* of the Bank in Bombay. Bháu Krishnaráv was the second clerk in the Bank, and it was arranged between him and the Agent that he should

\* Suit No. 700 of 1889: Appeal No. 692,

1891.

YESU RAMJI  
KALNATH

BALKRISHNA  
LAKSHMAN.

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January 30;

February

6—13.