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the strength of that belief. The road itself would appear to have been practically completed before and not after the promise which was the foundation of that belief. It has been suggested that an act would also include an omission and that there was the omission to take the necessary steps to acquire the land. But no endeavour whatever was made at the trial to prove that it was ever debated whether steps should or should not be taken to acquire the land. No acts or omissions have in fact been established on the part of the Municipality which would in my opinion have justified us in applying the provisions relating to estoppel contained in section 115 of the Indian Evidence Act. The gift itself was, as pointed out by my learned Brother, incomplete and it could in the circumstances have only ripened into title by a complete 12 years adverse possession or by a registered deed under section 123 of the Transfer of Property Act.

There should, therefore, in my opinion be the decree proposed for possession within the period named by the parties without mesne profits and each party bearing his own costs.

*Appeal allowed.*

R. R.

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## APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.*

1920
*March* 11.

GORDHANDAS VITHALDAS (ORIGINAL DEFENDANT), APPELLANT *v.* MOHANLAL MANEKLAL DOSHI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS*.

*Registration—Constructive notice—Agreement between plaintiff and the defendant's vendor by which the latter restricted the ordinary user of his property—Agreement not a covenant running with land—Agreement if indexed in the register in relation to defendant's property would be notice—Injunction.*

* Second Appeal No. 249 of 1919 (with Second Appeal No. 250 of 1919).

The plaintiff had entered into an agreement with defendant's vendor by which the latter agreed to a restriction of ordinary user of his property. This document was registered and on the strength of it, the plaintiff sued to obtain certain reliefs by way of injunction against the defendant. Both the lower Courts decreed the plaintiff's claim on the ground that the document was registered and, therefore, the defendant must be presumed to have had notice of it.

*Held*, that the agreement not being a covenant running with the land but being merely a restrictive covenant by which the defendant's vendor restricted the ordinary user of his property, it could not be said that defendant had constructive notice unless the document was indexed in the register in relation to defendant's property.

PER HEATON, J. :—" Registration does not necessarily give notice to anybody of anything. But if a registered document is so indexed that an enquirer anxious to ascertain whether there are documents relating to a property which he proposes to buy, can find from the index documents relating to that property, then it will be held that he has notice of those documents ; because if he made the enquiry, which as a prudent man he ought to make, then they would come to his notice."

SECOND appeal against the decision of B. C. Kennedy, District Judge of Ahmednagar, confirming the decree passed by M. G. Mehta, Second Class Subordinate Judge at Nadiad.

Suit for an injunction.

Plaintiff and defendant were adjoining householders. The plaintiff had all along owned his house to the north but the defendant purchased his house to the south from the sons of one Motichand. On the 27th March 1897, a registered agreement was entered into between the plaintiff and the sons of Motichand whereby it was agreed that a disputed plot of land in the angle formed by the houses should not be used by the defendant as a passage from the northern side of his house and that the defendant was not to erect privies on his own land so as to open into that plot. The defendant further agreed that if he built on this plot

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he would keep a dead wall towards the north, and that the plot was to be kept open until such wall was erected by the defendant.

The defendant began constructing certain doors and windows in the north wall of the house he had purchased and steps down from the same, and to construct a cesspool in the land in suit.

The plaintiff, thereupon, brought a suit for injunctions to restrain the defendant from committing any of the acts intended or threatened.

The defendant contended, *inter alia*, that the agreement could not impede the free enjoyment of his property and that it was against law.

The Subordinate Judge held that the agreement was proved and valid. He found that the actions of the defendant were contrary to the agreement and prohibited him from doing them.

On appeal, the District Judge confirmed the decree.

The defendants appeal to the High Court.

*G. N. Thakor*, for the appellant.

*H. V. Divatia*, for the respondents.

MACLEOD, C. J. :—The plaintiff sued to obtain certain reliefs by way of injunction against the defendants. He had obtained a decree in the trial Court which was upheld in first appeal. The defendants now appeal to this Court, and the real question is whether they had notice of the agreement which was made between the plaintiff and their vendor. It seems to have been assumed by both the lower Courts that because that document was registered, therefore the defendants must have had notice of it. It has not been argued, and I do not think it can be argued, that the agreement creates an interest in the defendants' property in favour of the plaintiff or an easement therein. It is merely a restrictive covenant by which the defendants'

vendor restricted the ordinary user of his property. Such a covenant would not run with the land, and would not be binding on the purchaser unless he had notice. The question of fact whether the defendants could have had notice of this particular agreement if they had inspected the register in the ordinary course has not been gone into in the trial Court. No oral evidence was led. The defendants admitted execution of the document by their vendor, and the Judge seems to have come to the conclusion from this that the defendant had knowledge of the agreement when he bought the property. But unless the defendant would have found this agreement in the register when he went to inspect the register, as he ought to have done as a prudent purchaser, it cannot be said that he had constructive notice. If the property to which this agreement refers is in the index of the register, so that on the defendant inspecting the index he would have found it, then it can be said that the defendant had constructive notice of it. That is a question which can only be decided by taking evidence as to the state of the register, and where this agreement was entered into. Therefore the following issues must go back to the trial Court:—(1) Whether the defendant had actual notice of the agreement in suit? (2) Whether he had constructive notice, that is to say, if he had inspected the register in the ordinary way as a prudent purchaser, would he have found this agreement? Findings to be returned in four months after the record reaches the trial Court. As the plaintiff has been in fault, he must pay the costs in this Court and the Court below. The costs in the trial Court will be costs in the cause. Same order in second appeal No. 250 of 1919.

HEATON, J. :—I agree. There seems to be a good deal of misapprehension about registration and its effect as notice. Registration does not necessarily give notice

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to anybody of anything. But if a registered document is so indexed that an enquirer anxious to ascertain whether there are documents relating to a property which he proposes, for instance, to buy, can find from the index documents relating to that property, then it will be held that he has notice of those documents; because if he made the enquiry, which as a prudent man he ought to make, then they would come to his notice. The particular document we are concerned with was not a transfer of any property, but an agreement. It is an agreement entered into by two persons, the vendor to the defendant and the plaintiff, and it relates to two properties, the property belonging to the defendants' vendor and the property belonging to the plaintiff. How it is indexed in fact we do not know. The matter has never been inquired into. It is quite possible it might be indexed in various ways. It might be indexed under the names of the contracting parties. That would not give notice for the purpose of this case. It might be indexed by a reference to the property belonging to the plaintiff and that again would not be notice for the purpose of this case. But if it is indexed in relation to the defendants' property, then no doubt it would be notice.

*Issues sent down.*

J. G. R.

## APPELLATE CIVIL.

*Before Mr. Justice Shah and Mr. Justice Hayward.*

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*[A]pril 6.*

BHAICHAND KIRPARAM AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* RANCHHODDAS MANCHHARAM AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

*Civil Procedure Code (Act V of 1908), section 47, Order XXXIV, Rule 14—Mortgagor retaining possession of the mortgaged property under a rent-note executed to mortgagee—Arrears of rent—Non-payment of rent—Suit by*

* Second Appeal No. 432 of 1919.