

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

VISHVANATHBHAT ANNABHAT PUJARI (ORIGINAL PLAINTIFF),
APPELLANT v. MALLAPPA BIN NINGAPPA AND ANOTHER (ORIGINAL
DEFENDANTS), RESPONDENTS*.

1925.

June 19.

Indian Registration Act (XVI of 1908), section 28—Portion of property included in instrument only to give jurisdiction to Sub-Registrar to register—Intention of parties to reconvey property—No evidence can be led regarding intention—Dekkhān Agriculturists' Relief Act (XVII of 1879), section 3 (z)—Suit to set aside sale deed and for redemption—Suit outside scope of Act—Sale by a minor's mother—Mortgage existing on property—Sufficient for a bona fide purchaser to inquire of fact of mortgage—Purchaser not bound to see to application of purchase money.

On August 2, 1905, the plaintiff's mother during his minority, purporting to act as his guardian, sold the land in suit to the father of the defendants. The plaintiff subsequently sued to set aside the sale on the grounds (1) that the sale deed was a fraud on registration, because a plot of ground was inserted in the deed merely for the purpose of giving jurisdiction to the Sub-Registrar, the intention of the parties being that the land should be reconveyed to the vendor; and (2) in reliance on the provisions of the Dekkhān Agriculturists' Relief Act, 1879, that the sale was of the nature of a mortgage.

Held, that, a portion of the property mentioned in the deed being in fact within the jurisdiction of the Sub-Registrar, the registration was valid, and no evidence could be led with regard to the intention of the parties at the time to deal again with that portion of the property which was within the jurisdiction and which had rendered the registration valid.

Harendra Lal Roy Chowdhuri v. Haridasi Debi⁽¹⁾ and *Biswanath Prashad v. Chandra Narayan Chowdhuri*⁽²⁾, distinguished.

Held, further, on the contention that the transaction was in the nature of a mortgage, that the suit being a suit to set aside the sale deed and not a suit for redemption *simpliciter*, the plaintiff was not entitled to take advantage of the provisions of the Dekkhān Agriculturists' Relief Act, 1879.

Mt. Bachi v. Bickchand⁽³⁾, relied on.

* Second Appeal No. 220 of 1924.

(1) (1914) 41 Cal. 972.

(2) (1921) L. R. 48 I. A. 127.

(3) (1910) 13 Bom. L. R. 56 (P. C.).

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Under Hindu law, where property is sold by a minor's mother acting as his guardian to pay off a mortgage created by a minor's father, it would be sufficient for a *bona fide* purchaser for value to inquire whether there was as a matter of fact a mortgage to be paid off. He would not be bound to follow the purchase money, and ascertain that it was properly disposed of by the minor's guardian.

SECOND appeal against the decision of R. R. Sane, Assistant Judge at Dharwar, reversing the decree passed by R. Baindur, Subordinate Judge at Hubli.

Suit to recover possession.

One Annabhat owned in all eight lands, of which he mortgaged five lands with possession to one Kristappa for Rs. 2,500 on May 2, 1900. Subsequently Annabhat died and his son Vishwanathbhat (plaintiff) became the sole owner of the property. During Vishwanath's minority his mother Bhagirthibai, purporting to act as his guardian sold the land in suit (S. No. 213) to Ningappa the deceased father of the defendants for a sum of Rs. 2,000. The sale deed was passed on August 2, 1905, and on the same date Bhagirthibai paid Rs. 2,675 to the mortgagees and got the mortgage bond with an endorsement of satisfaction. Since then the land in suit remained with the defendants.

In 1919, the plaintiff sued to set aside the sale and also prayed for redemption of the land on taking accounts under the Dekkhan Agriculturists' Relief Act. The plaintiff alleged that the sale deed was invalid on the grounds: (1) that it was a fraud on registration, because the land was situated in the village of Sulla and within the jurisdiction of the Sub-Registrar of Hubli and the sale deed ought to have been registered in the Hubli Sub-Registrar's office; but the parties got it registered in Navalgund Sub-Registrar's office and in order to give the Navalgund Sub-Registrar jurisdiction they inserted in the deed a plot of vacant ground which was of insignificant value and simultaneously

with the sale deed the purchaser Ningappa sold the suit plot to Chidamberbhat as the Benamidar of Bhagirthibai; (2) that the sale was not for the benefit of the plaintiff; (3) that the sale was of the nature of mortgage and the amount of consideration was paid off from the profits of the land.

The defendants contended that the transaction was not a mortgage but a sale out and out; that it was not in fraud of registration; and that the sale was for the benefit of the plaintiff.

The Subordinate Judge held that in getting the deed registered in Navalgund Sub-Registrar's office, there was no fraudulent evasion of the provisions of the Registration Act. In his opinion, although the plot of ground in the sale deed was inserted merely with a view to give jurisdiction to the Sub-Registrar of Navalgund, the question with what intention the said portion was inserted in the deed by the parties was immaterial. The portion was to all intents and purposes alienated by the deed. The fact that by a private understanding the said portion of the property was retransferred to the vendor of the sale deed was also immaterial, for such an act could not retrospectively invalidate the registration which was once validly effected. He further held that the mortgage nature of the transaction could not be enquired into under section 10A of the Dekkhan Agriculturists' Relief Act. The sale deed was dated August 2, 1905, and the major portion of the Dekkhan Agriculturists' Relief Act was applied to the District on August 15, 1905 (*vide* G. No. 4154, Judicial): *Chanbasayya v. Chennappavda*⁽¹⁾. On the facts, however, the learned Subordinate Judge held that there was no pressing necessity for the plaintiff's mother to effect a sale of the property in suit and,

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therefore, it was not binding on the plaintiff : but he found that by the sale the plaintiff was benefited in getting the mortgage redeemed earlier and this benefit amounted to Rs. 1,481. The decree was, therefore, passed that on the plaintiff paying Rs. 1,481 to the defendants within six months, he was to recover possession of the plaint land.

On appeal, the Assistant Judge held that the sale was binding on the plaintiff as it was effected to pay off the mortgage debt and as a matter of fact the debt was paid by the minor's mother out of the proceeds of the sale. He, therefore, reversed the decree and dismissed the plaintiff's suit.

The plaintiff appealed to the High Court.

S. R. Parulekar, for the appellant.

Nilkantth Atmaram, for the respondents.

MACLEOD, C. J.:—This is an appeal from the decision of the Assistant Judge of Dharwar, who, reversing the decree of the trial Court, dismissed the plaintiff's suit with costs throughout. The suit was one to recover possession of the plaint land with costs and future mesne profits, on the ground that the plaint land belonged to the plaintiff. His mother during his minority purporting to act as his guardian had sold the land to one Ningappa, the deceased father of defendants, on August 2, 1905. The sale was sought to be set aside on three grounds :—(1) that the sale-deed was a fraud on registration ; (2) that the sale was not for the benefit of the plaintiff ; and (3) that the sale was of the nature of a mortgage and the amount of consideration had already been paid off from the profits of the land.

The fraud on registration set up by the plaintiff is based on the fact that only a portion of the land in the sale-deed was within the jurisdiction of the Sub-Registrar of Navalgund, who registered the sale-deed,

and it is alleged that that land was inserted in the deed merely for the purpose of giving jurisdiction to the Sub-Registrar, the intention of the parties being that it should be reconveyed to the vendor. The Judge in the trial Court said:—

“The circumstances in which the two sale-deeds seem to have been passed lend support to the allegation that the insertion of the plot of ground in the sale-deed now in suit was merely with a view to give jurisdiction to the Sub-Registrar of Navalgund to register the deed. Besides Chidambarbhat, who is examined by the defendants, swears that the object of the insertion of the plot in the deed was merely to give jurisdiction to the Sub-Registrar of Navalgund, and that the parties to the sale-deed in suit had no intention to alienate the said plot by the deed, and that the sale to him by Ningappa of the plot was *benami* for Bhagirthibai.”

Exhibit 84 is the deed which transferred the plot to Chidambarbhat, the benamidar for plaintiff's mother.

The appellant relies for his argument that there was a fraud on registration on two cases: *Harendra Lal Roy Chowdhuri v. Haridasi Debi*⁽¹⁾, in which it was held that none of the properties appearing in the document to be registered was within the jurisdiction of the Registrar, and therefore, registration was invalid; and *Biswanath Prashad v. Chandra Narayan Chowdhuri*⁽²⁾, in which it was proved that the transferor had no title to the property mentioned in the transfer-deed which would bring it within the jurisdiction of the Registrar. Neither of those cases is applicable to the facts in the present case. But the appellant wishes us to extend those decisions to the facts before us. We are concerned at present with the registration of the sale-deed. The Registrar had jurisdiction to register that document, because a portion of the property mentioned in the deed was within his jurisdiction. Clearly, if no property belonging to the transferor appearing in the document to be registered is within the jurisdiction of the Registrar, registration

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⁽¹⁾ (1914) L. R. 41 I. A. 110 : 41 Cal. 972.

⁽²⁾ (1921) L. R. 48 I. A. 127 : 48 Cal. 509.

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by such Registrar of that document would be invalid. But we are not prepared to go further and say that evidence can be led with regard to the intention of the parties at the time the principal document was registered, to deal again with the portion of the property which was within the jurisdiction of the Registrar and which rendered its registration valid.

The next question is whether the sale was for the benefit of the plaintiff. It has been found that the plaintiff's mother sold the property in order to pay off a mortgage and, from the facts found, it was certainly desirable in the interests of the plaintiff that the mortgage should be paid off, as the profits of the land mortgaged were more than the interest on the mortgage, provided they could be realized.

The appellant, however, objects to the payment made by his mother as being excessive. There is no evidence that it was excessive, as the appellant took no steps to prove that on a proper mortgage account being taken, the amount paid by the plaintiff's mother was too much. Evidence was called to show that certain tenants had paid full rent to the mortgagee between 1902 and 1905. As the Judge remarks, they could not produce the receipts of such payment. However that may be, the onus would certainly lie on the appellant, if he seeks to dispute his mother's action, to prove that she had over-paid the mortgagee. But even then that would not affect the position of a *bona fide* purchaser for value. It would be sufficient for him to inquire whether there was as a matter of fact a mortgage to be paid off. He would not be bound to follow the purchase money, and ascertain that it was properly disposed of by the plaintiff's guardian.

The last point urged by the plaintiff was that the sale by his mother was of the nature of a mortgage. That question was ruled out by the trial Judge on the

ground that the Dekkhan Agriculturists' Act did not apply at the date of the sale deed, relying on the decision in *Chanbasayya v. Chennappavda*⁽¹⁾. Since the decision of the appellate Court in this case, the decision in *Chanbasayya v. Chennappavda*⁽¹⁾ was over-ruled by a decision of the Full Bench⁽²⁾. Therefore there was no objection to the plaintiff's contention that he should be allowed to prove that the sale was in reality a mortgage transaction between his mother and the purchaser if the suit was one in which the question could be raised. But this is not a suit for redemption. This is a suit to set aside a sale deed. Therefore this is not a suit falling within the class of suits specified in the Dekkhan Agriculturists' Act, and the plaintiff is not entitled to take advantage of its provisions. As pointed out in *Mt. Bachi v. Bickchand*⁽³⁾ the Dekkhan Agriculturists' Relief Act gives extraordinary reliefs in certain cases which are specified in the Act. The appeal, therefore, fails and must be dismissed with costs.

Decree confirmed.

J. G. R.

⁽¹⁾ (1919) 44 Bom. 217.

⁽²⁾ *Ganpat Chandrabhan v. Tulsi*, (1923) 48 Bom. 214 (F. B.).

⁽³⁾ (1910) 13 Bom. L. R. 56 (P. C.).

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

THE G. I. P. RAILWAY COMPANY (ORIGINAL DEFENDANT NO. 2).
APPELLANT v. HAJI TARMAHOMED HASAM (ORIGINAL PLAINTIFF).
RESPONDENT^{*}.

1925.

June 24.

Railway Company, liability of—Risk Note Form B—Consignment of oil tins—Leakage of entire contents of some tins—No loss of complete package—Company not liable.

^{*} Second Appeal No. 762 of 1923.

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