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section 26 of Act II of 1906 the Mamlatdar's Court would have no jurisdiction to entertain a suit under the Mamlatdars' Courts Act. Under the proviso to section 5 (1) of the Mamlatdars' Courts Act, discretion is given to the Mamlatdar to refuse to exercise the power under the Act if he is of opinion that the matter would be suitably dealt with by a civil Court.

I think that section 26, clause (b), bars the jurisdiction of the Mamlatdar when there is a civil suit pending between the parties in respect of any dispossession, recovery of possession or disturbance of possession. I think, therefore, that the contention on behalf of the applicant is well founded and that the Mamlatdar had no jurisdiction to entertain the present suit.

I would, therefore, make the rule absolute, reverse the decree of the Mamlatdar and dismiss the plaintiffs' suit with costs throughout.

Rule made absolute.

J. G. R.

APPELLATE CIVIL

1927

November 17

Before Mr. Justice Fawcett and Mr. Justice Mirza.

BASAPPA BUDAPPA HALAVALLAD (ORIGINAL DEFENDANT No. 2), APPELLANT
v. BHIMANGOWDA SHIDDANGOWDA PATIL AND ANOTHER (ORIGINAL
PLAINTIFF AND DEFENDANT No. 1), RESPONDENTS.*

Transfer of Property Act (IV of 1882), section 52—Transfer pendente lite—Alienee bound by decree though not party to suit—Civil Procedure Code (Act V of 1908), section 47—Alienee—Separate suit against alienee.

An alienee *pendente lite* is bound by the result of the suit although he is not a party to it.

Gulabchand Manikchand v. Dhondi valad Bhan⁽¹⁾; *Lakshmandas Sarupchand v. Dasrat*⁽²⁾; and *Faiyaz Husain Khan v. Prag Narain*,⁽³⁾ followed.

A separate suit can lie against such an alienee to recover possession of the property.

Madho Das v. Ramji Patal⁽⁴⁾ and *Sheo Narain v. Chunni Lal*,⁽⁵⁾ distinguished.

*Second Appeal No. 506 of 1926.

⁽¹⁾ (1873) 11 Bom. H. C. 64.

⁽²⁾ (1907) 29 All. 339 at p. 345.

⁽³⁾ (1880) 6 Bom. 168.

⁽⁴⁾ (1894) 16 All. 286.

⁽⁵⁾ (1900) 22 All. 243.

SECOND APPEAL from the decision of V. M. Ferrers, District Judge of Dharwar, reversing the decree passed by S. A. Aranha, Subordinate Judge at Hubli.

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The plaintiff filed a suit (No. 318 of 1910) against his brother for partition of the family property. Pending the suit, his brother sold a portion of the property to defendants Nos. 1 and 2. The alienee was not made a party to the suit. The suit ended in a consent decree under which the property was ordered to be divided half and half between the parties

The plaintiff filed the present suit to recover possession of the property alienated to defendants Nos. 1 and 2.

The trial Court was of opinion that the property in dispute did not form part of the family property and dismissed the suit.

On appeal, the District Judge was of opinion that the property in suit was also in dispute in the earlier suit, and that the defendants were bound by the decree in that suit. The suit was accordingly decreed.

Defendant No. 2 appealed to the High Court.

G. P. Murdeshwar, for the appellant.

Nadkarni, with *R. A. Jahagirdar*, for respondent No. 1.

FAWCETT, J. :—In this case the plaintiff brought a suit against his brother Basangowda on August 2, 1918, for a partition of joint family property. On August 10, 1918, Basangowda sold the property in suit, which was included in the claim of his brother, to defendants Nos. 1 and 2. Basangowda died before the suit could be determined, and his widow and children were brought on the record in his place. Eventually a decree was passed under a compromise which *inter alia* awarded the plaintiff half of the suit property. In

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1923 he brought a suit against defendants Nos. 1 and 2, to whom Basangowda had sold the property, and two others to recover possession of this half of the suit property, namely Survey No. 408.

The trial Court dismissed his suit holding that the decree was invalid for certain reasons. On appeal the District Judge of Dharwar held that section 52 of the Transfer of Property Act applied to the sale in favour of defendants Nos. 1 and 2, and that they were bound by the consent decree. He allowed the appeal and awarded the plaintiff half of Survey No. 408 with mesne profits.

The defendant No. 2 appeals from this decree. On his behalf two main contentions were set up: (1) that defendants Nos. 1 and 2 should have been made parties to the suit of 1918, and not having been so joined the decree is not binding upon them; (2) that even if they are bound by the decree they were "representatives" of Basangowda within the meaning of section 47, Civil Procedure Code, and that the present suit is barred under that section, because the plaintiff should have asked for possession of the property in execution proceedings.

As to the first point it is clear that defendants Nos. 1 and 2 should not have been joined in the suit in view of the terms of section 52 of the Transfer of Property Act, and the reason for the rule about transfers *pendente lite*. It is sufficient for me to refer to Gour's Law of Transfers, 5th Edition, Vol. I, Article 930, at p. 592, and the leading case in this High Court of *Gulabchand Manikchand v. Dhondi valad Bharu*,⁽¹⁾ which was confirmed in the Full Bench case of *Lakshmandas Sarupchand v. Dasrat*.⁽²⁾ In those two cases the decision in *Bellamy v. Sabine*⁽³⁾ is quoted

⁽¹⁾ (1873) 11 Bom. H. C. 64.⁽²⁾ (1880) 6 Bom. 168.⁽³⁾ (1857) 1 DeG. & J. 566 at p. 576

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as a leading authority on the subject of *lis pendens*, and the view is there expressed that it was immaterial whether the alienees *pendente lite* had or had not notice of the pending proceedings, for, if this were not so, there would be no certainty that the litigation would ever come to an end. In such cases the Courts do not recognise the alienations *pendente lite* as affording any proper ground for staying the suit. This view was confirmed by the Privy Council in *Faiyaz Husain Khan v. Prag Narain*,⁽¹⁾ where this same case of *Bellamy v. Sabine*⁽²⁾ is referred to and their Lordships say (p. 345): "The correct mode of stating the doctrine, as Lord Cranworth, L. C., observed in the same case, is that '*pendente lite* neither party to the litigation can alienate the property in dispute so as to affect his opponent'." The subsequent death of Basangowda can make no difference to this principle.

As to the second contention, it is to be noted that the point is raised for the first time in this second appeal; but it is one of law affecting the Court's jurisdiction, and so it must be considered. Section 52 of the Transfer of Property Act says as plainly as possible that a transfer *pendente lite* cannot affect the rights of any other party to the suit "under any decree or order which may be made therein."

Apart from the special provisions of section 47, Civil Procedure Code, the plaintiff would have a right to sue to remove obstruction to his obtaining possession of the land and to the execution of his decree, cf. *Takhuroodeen Mahomed Eshan Chowdry v. Karimbux Chowdry*,⁽³⁾ and also the Privy Council case of *Faiyaz Husain Khan v. Prag Narain*⁽⁴⁾ that I have already referred to, where such a suit against the transferee succeeded.

⁽¹⁾ (1907) 29 All. 339 at p. 345.⁽²⁾ (1857) 1 DeG. & J. 566.⁽³⁾ (1865) 3 W. R. 20.⁽⁴⁾ (1907) 29 All. 339.

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To treat defendants Nos. 1 and 2 as "representatives" of Basangowda under section 47, Civil Procedure Code, directly *affects* this right of suit, and in my opinion the transfer cannot be recognised by the Court as giving them any right to be regarded as "representatives" for the purpose of attacking plaintiff's right to sue. There is no authority cited for the proposition that transferees *pendente lite* are "representatives" within the meaning of section 47 except *Madho Das v. Ramji Patak*⁽¹⁾ and *Sheo Narain v. Chunni Lal*.⁽²⁾ The decision in the latter case explains the remarks in the former case, and the judgment limits the decision to regarding the transferee as a representative of the alienor only (p. 246) "in the sense that, being bound by the decree afterwards passed, he is *competent* under section 244 (now section 47) of the Code, to raise in the execution of that decree any of the questions mentioned in that section." (See *Sheo Narain v. Chunni Lal*⁽²⁾). That is a very different thing to holding that *in all cases* a transferee *pendente lite* is a "representative" of his transferor under section 47. It merely holds that the transferee can himself move the executing Court and may raise objections to the execution of the decree, if he thinks fit.

We are not concerned with that question. Here defendants Nos. 1 and 2 want to use section 47 as a shield to debar the plaintiff from his ordinary rights under his decree, and in such a case section 52 applies, in my opinion, to forbid their doing so. The transferee *pendente lite* cannot be *recognised* by the Court for such a purpose, and defendants Nos. 1 and 2 cannot, therefore, be treated as "representatives" of Basangowda under section 47.

⁽¹⁾ (1894) 16 All. 286.⁽²⁾ (1900) 22 All. 243.

Authorities regarding an ordinary purchaser and not one *pendente lite* such as *Veyindramuthu Pillai v. Maya Nadan*,⁽¹⁾ cited by appellant's pleader, do not bear on this point.

I would, therefore, dismiss the appeal with costs.

MIRZA, J. :—I agree.

Appeal dismissed.

R. R.

⁽¹⁾ (1919) 43 Mad. 107.

APPELLATE CIVIL

Before Mr. Justice Madgavkar and Mr. Justice Patkar.

MAHADAJI AMRIT KULKARNI, APPLICANT *v.* THE COLLECTOR OF
SATARA AND ANOTHER, OPPONENTS.*

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November 24

Bombay Hereditary Offices Act (Bom. Act III of 1874), section 10—Watan Lands—Gift—Suit by donee against mortgagee for possession—Watandar not party to suit—Decree for possession—Cancellation of decree on production of Certificate from Collector, legality of.

One B, a widow of a Watandar, made a gift of Watan lands to A. A mortgaged the lands to J. A sued for redemption and obtained a decree for possession in 1923. To this decree the Watandar was not a party. In 1926, on production of the Certificate from the Collector, the Subordinate Judge set aside the decree in view of the provisions of section 10 of the Hereditary Offices Act, 1874, and ordered that A, the decree-holder, should deliver possession of the land either to the Collector or to the mortgagee. On an application being preferred to the High Court against the order,

Held, allowing the application and setting aside the order of the Subordinate Judge, that, the Watandar not being a party to the decree in the suit of 1923, section 10 of the Hereditary Offices Act, 1874, and the Certificate purporting to be given under that section had no application, and the Subordinate Judge had no power even under section 10 to pass the order compelling A to deliver possession to the Collector or the mortgagee.

Shankar Gopal v. Babaji Lakshman⁽¹⁾ and *Bhau Balapa v. Nana*,⁽²⁾ relied on.

Per MADGAVKAR, J. :—“The object of section 10 of the Hereditary Offices Act, 1874, was to give practical effect to the prohibition against alienations by Watandars as provided by sections 5 and 7, and where both parties were strangers section 10 had no application. The other view permitting intervention by the Collector in decrees to which the Watandar is not a party would widen the scope of section 10 beyond the bounds contemplated by the legislature and might lead to undesirable results.”

*Civil Revision Application No. 296 of 1926.

⁽¹⁾ (1888) 12 Bom. 550.

⁽²⁾ (1888) 13 Bom. 343.