

of the Code of 1882 the claims of the subsequent execution-creditor Karamchand were "claims enforceable under the attachment" made in enforcement of Amarchand's decree : *Sorabji Edulji Warden v. Govind Ramji* ⁽¹⁾. The explanation to the 64th section of the Code of 1908 gives effect to that decision and expressly says that "claims enforceable under an attachment include claims for the rateable distribution of assets". It would thus appear that the mortgage in question is void against Karamchand's claims also. The plaintiffs entered into the transaction subsequent to and in defiance of Amarchand's attachment, and they presumably knew the legal consequences of that attachment.

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Decree confirmed.

J. G. R.

APPELLATE CIVIL.

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

KESHAV RAGHUNATH JOSHI (ORIGINAL PLAINTIFF), APPELLANT v. GAFURKHAN DAIMKHAN BUBERE AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS².

1922.

January 20.

Indian Limitation Act (IX of 1908), Article 134—Transfer from mortgagee as ostensible owner—Valuable consideration—Title of transferee unassailable after statutory period.

When a mortgagee sells the mortgaged property as an ostensible owner and there is valuable consideration for the sale, the right of the purchaser becomes unassailable by the mortgagor by the lapse of twelve years from the date of the purchase under Article 134 of the Limitation Act, 1908.

² Second Appeal No. 425 of 1921.

⁽¹⁾ (1891) 16 Bom. 91.

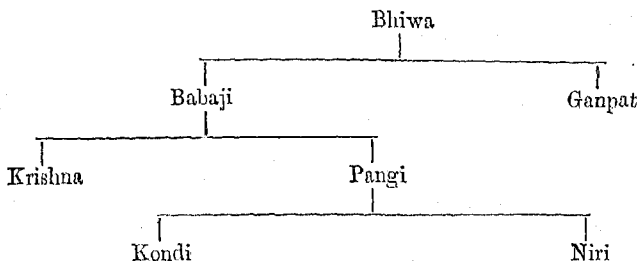
1922.

KESHAV
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SECOND appeal against the decision of P. J. Talyarkhan, District Judge of Thana, reversing the decree passed by V. S. Nerulkar, Subordinate Judge at Panvel.

Suit to recover possession.

The property in suit originally belonged to one Bhiwa. His family pedigree was as follows :—



In 1891 the property was mortgaged with possession to defendant No. 1's father Martand by Ganpat for himself and as guardian of his minor nephew Krishna.

In 1902 Martand, purporting to be owner, sold the property to defendant No. 2 who entered into possession.

Subsequently Ganpat and Krishna having died, the property was inherited by Krishna's sister Pangi and eventually it went to her daughters Kondi and Niri.

In 1918, the plaintiff purchased the equity of redemption from Pangi's daughters, Kondi and Niri, and sued to redeem the mortgage of 1891 and to recover possession.

The defendant No. 2 contended *inter alia* that the suit was barred by limitation.

The Subordinate Judge held that defendant No. 2 held the property as mortgagee and that his possession was not adverse to the mortgagors. He, therefore, allowed the plaintiff to redeem.

On appeal, the District Judge held that the suit was barred under Article 134 of the Limitation Act. His reasons were as follows:—

“The case would be governed by that Article and the claim would be time-barred if it appeared that the original mortgagee had purported to sell the land as his absolute property and defendant No. 2 had purchased it as such. In order that Article 134 may apply it is in my opinion enough that the mortgagee should have purported to convey, and his transferee should have believed that he was acquiring an absolute title. It is not further necessary that the latter should have continued ignorant of the defect in his title till the period of limitation prescribed by the article had run out. In his deposition in the present suit defendant No. 2 states that “he got the mortgage deed five or six months afterwards from Martand. I asked him why he sold the property if he was a mortgagee. He said he had become the owner in pursuance of an agreement which he said he would give me afterwards. He however did not give it to me.” Exhibit 52. This story about an agreement may not be true and may possibly have now been invented because defendant No. 2 thinks that unless he makes out that his vendor had acquired an absolute title he, too, would be held to have acquired no more than the mortgage right under his purchase. There is, however, nothing to show and no good reason to believe that the recitals in his sale deed were made in collusion with him and the mortgage bond was handed over to him at the time the sale deed was passed and not subsequently as stated by him. On the whole, therefore, I find upon the strength of the recitals in the sale deed that the mortgagee Martand had purported to sell the land as his absolute property and defendant No. 2 had purchased it as such. That being so, the case is governed by Article 134 and the suit to recover possession from defendant No. 2 is consequently time-barred.”

The plaintiff appealed to the High Court.

P. B. Shingne, for the appellant:—This should be regarded as a suit for redemption. The transferee from the mortgagee is no doubt a party to the suit and Article 134 has, therefore, been applied by the lower appellate Court. But, in this case, there is the special fact that the transferee got the knowledge that his assignor (the mortgagee) was a mortgagee and not the owner of the property transferred. Though under the provisions of the Law of Limitation as they obtain since the Indian Limitation Act of 1877, good faith is no

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longer required on the part of the transferee, this state of knowledge transformed the situation created by the apparent sale deed in favour of the transferee. He should, as a consequence, be held to be in the position of the mortgagee.

The term fixed in the mortgage was not over at the date of the sale by the mortgagee and it will be necessary to reconcile, as far as possible, Articles 134 and 148. Hence this case is not covered by the rulings under Article 134.

Pendse with *V. D. Limaye*, for the respondent No. 1, was not called upon.

MACLEOD, C. J.:—The plaintiff sued to recover by redemption possession of the plaint property. The property had been mortgaged with possession in 1891 by one Ganpat Bhiva Chavan for himself and as guardian of his minor nephew Krishna Babaji Chavan to the 1st defendant's father Martand. The equity of redemption eventually came to two girls, Kondi and Niri, from whom the plaintiff purchased in 1918.

In 1902 Martand sold the property to the 2nd defendant purporting to be the owner thereof, and the 2nd defendant has since been in possession.

It is clear then that any suit against the 2nd defendant to recover possession of the suit property must fail under Article 134 of the Indian Limitation Act if it is not filed within twelve years from the date of the transfer. But the appellants wish to rely on the fact that within a few months of the transfer the 2nd defendant acquired the knowledge that Martand was a mortgagee and not an owner. Defendant No. 2 stated that he asked Martand why he sold the property if he was only a mortgagee, and Martand said he had become the owner in pursuance of an agreement, which he promised to give to the 2nd defendant later on.

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Whether that story is true or not, the Indian Limitation Act makes no provision for the case of a transferee who gives valuable consideration at the time of transfer from an ostensible owner, but finds later on that his transferor was only a mortgagee, and not owner of the property transferred.

There does not seem to be any direct authority on this point. But unless direct provision is made in the Act that, on the acquisition of such knowledge, the time which had previously begun to run against the mortgagor should stop, it is difficult to say that the later knowledge on the part of the transferee would prevent time running in his favour. Good faith is no longer required on the part of the transferee. Article 134 of the Indian Limitation Act XV of 1877 had the words "and afterwards purchased from the trustee or mortgagee for a valuable consideration," while in the present Article 134 the words are "and afterwards transferred by the trustee or mortgagee for a valuable consideration." In *Bagas Umarji v. Nathabhai Utamram*⁽¹⁾, it was pointed out that the alteration in the language of Article 134 of the Limitation Act (IX of 1908) was "a Legislative recognition of the soundness of the view that the Article was intended to give protection to all transferees for value including mortgagees." Therefore, the appeal must be dismissed with costs.

COYAJEE, J.:—I agree that in the present state of the law it is difficult to give effect to the contention raised on behalf of the appellant, namely, that five or six months after the purchase the 2nd defendant obtained the mortgage deed itself from Martand and that therefore he had knowledge of the nature of his vendor's rights. The learned District Judge in this connection observes:—

"There is, however, nothing to show, and no good reason to believe that the recitals in his sale deed were made in collusion with him and the mortgagee

⁽¹⁾ (1911) 36 Bom. 146 at p. 150.

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bond was handed over to him at the time the sale deed was passed and not subsequently as stated by him. On the whole, therefore, I find upon the strength of the recitals in the sale deed that the mortgagee Martand had purported to sell the land as his absolute property and defendant No. 2 had purchased it as such. That being so, the case is governed by Article 134 of the Limitation Act."

The learned Judge is right. When a mortgagee sells the mortgaged property as an ostensible owner and there is valuable consideration for the sale, the right of the purchaser becomes unassailable by the mortgagor by the lapse of twelve years from the date of the purchase. The mortgagee may be dishonest, the purchaser may not make any enquiry as to his vendor's title; the mortgagor may be ignorant of the sale of his property by the mortgagee: these facts no longer affect the rights of the purchaser who has given valuable consideration. Article 134 of the Indian Limitation Act (IX of 1871) required "good faith" on his part. That condition was however removed by Act XV of 1877 and is not re-imposed by Act IX of 1908. The language of the enactment now in force being clear, the plaintiff's suit must fail.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

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

1922.

January 26.

NARAYAN LAXMAN CHANDVADKAR AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* GOPALRAO TRIMBAK CHANDVADKAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

Annuity—Grant of annuity as consideration for agreement to give in adoption—Hindu Law—Adoption—Grant invalid—Question whether grant of annuity by father is binding on sons.

*Second Appeal No. 374 of 1921.