

1873

COURT OF
WARDS
v.
KUPULMUN
SING.

and for insisting upon strict proof of the plaintiff's material allegations.

It is unnecessary, however, that I should say any thing further upon the merits of the plaintiffs' claim. We confine ourselves simply to dismissing the suit with costs.

Appeal allowed.

1873
March 11, &
13.

Before Mr. Justice Markby and Mr. Justice Birch.

SOODHARAM BHUTTACHARJEE AND ANOTHER (DEFENDANTS) v.
ODHOY CHUNDER BUNDOPADHYA (PLAINTIFF).*

Act XX of 1866, ss. 18, 50, 100—Registration—Priority.

See also
15 B.L.R. 295.

A mortgaged a tank in 1859 to the plaintiff. The mortgage was never registered. A in 1867 sold the tank to C, and executed a deed of sale thereof. The deed of sale was duly registered, and C, had been ever since in possession under it. The plaintiff sued A on his mortgage, and in that suit C intervened and was made a defendant. A did not appear in the suit. Held, that C having registered his deed of sale, and being in possession, his title was good against the plaintiff.

Girija Sing v. Giridhari Sing (1) distinguished.

IN this suit the plaintiff sued to recover the sum of Rs. 99-1-8, which he alleged to be due to him under a mortgage-bond dated the 9th of Joisto 1266 (23rd May 1859). By this bond, which was not registered, the defendant Kristodhone Bose mortgaged to the plaintiff a certain tank as security for the repayment of the above-mentioned sum. After the institution of the suit, Soodharam Bhuttacharjee intervened, stating that he was in possession of the tank under a duly registered deed of sale dated 4th Sraban 1274 (19th July, 1867), and given to him by Kristodhone, and thereupon Soodharam Bhuttacharjee was made a party defendant to the suit. The defendant Kristodhone was summoned, but did not appear. The fact that Soodharam Bhuttacharjee was in possession of the tank was not disputed.

* Special Appeal' No. 980 of 1872, from a decree of the Judge of West Burdwan, dated the 18th April 1872, reversing a decree of the Munsif of that district, dated the 6th July 1871.

(1) 1 B. L. R., A. C., 14; see also *dur v. Bhikhu Chowdhry*, Sup. Vol., *Maharaja Maheswar Basu Sing Bahu*. B. L. R., 403.

The first Court held that the mortgaged-bond relied upon by the plaintiff was a forgery, and dismissed the suit on that ground solely. On appeal the Judge held that the mortgage-bond and deed of sale were both genuine; that Soodharam Buttacharjee must be taken to have bought the tank subject to the plaintiff's mortgage; and that the registered deed of sale could not have priority over the unregistered mortgage-bond; and he reversed the order of the lower Court, and passed a decree in favor of the plaintiff. From that decree Soodharam Buttacharjee appealed to the High Court.

Baboo Umbica Churn Bannerjee for the appellant.—The registered deed of sale must prevail over the unregistered mortgage-bond, Act XX of 1866, s. 50 (1). The mortgage-bond was no doubt executed before Act XX of 1866 came into force, but s. 100 of the Act will meet any objection raised on that ground.

Baboo Nilmadub Sen for the respondent,—Act XX of 1866 is not applicable, as the mortgage-bond was executed before that Act became law—*Girija Sing v. Giridhari Sing* (2). [MARKBY J.—But see *Mofuzel Hossein v. Golam Ambiah* (3).] It does not

(1) See Act VIII of 1871, s. 48.

(2) 1 B. L. R., A. C., 14.

(3) Before Mr. Justice Phear and Justice Sir C. P. Hobhouse, Bart.

MOFUZEL HOSSEIN (ONE OF THE DEFENDANTS) v. GOLAM AMBIAH (PLAINTIFF).*

The 23rd July 1868.

Act XX of 1866, ss. 49, 50—Registration—Priority.

Baboos Poorno Chunder Shome for the appellant.

Baboos Debendur Chunder Ghose and Ashootosh Dhur for the respondent.

The judgment of the Court was delivered by.

PHEAR, J.—In this case it appears that one Abdool Wahid, the first defend-

ant, being owner of certain property after entering into a contract of sale of the property with the plaintiff, sold it again to the other defendant. The contract of sale, whatever it was between the plaintiff and the vendor (defendant), was not registered, and it seems that it was not of such a character as absolutely to require registration according to the provisions of s. 49. Act XX of 1866, in order that it should be admissible in evidence, but the kabala under which the special appellant purchased was duly registered, and after the registration, the special appellant obtained possession of the property from the vendor. Upon this having occurred, the plaintiff brought the present suit against the vendor (defendant), seeking specific performance of his contract. The present special appellant then intervened and

* Special Appeal, No.—, from a decree of the Judge of the 24-Pergunnas, dated the 2nd November 1867, reversing a decree passed by the Munsif of that district, dated the 14th February 1867.

1873
SOODHARAM
BHUTTA-
CHARJEE
v.
ODHOY
CHUNDER
BUNDOPA-
DRYA.