

Plaintiff, it should be observed, has not sued the defendant, as the legal representative of the late jaghirdar, so as to make him liable to satisfy the arrears out of any assets other than the tenure which may have come to the defendant, but sues him simply as jaghirdar. The special appeal must be dismissed with costs.

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 RAJA NIL-
 MANI SING
 v.
 MADHAB
 SING.

Before Sir Barnes Peacock, Kt, Chief Justice, and Mr. Justice Mitter.

PRAHLAD MISSER v. UDIT NARAYAN SING.*

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Registration—Deed of Mortgage—Priority—Act XIX. of 1843, s. 2.

The purchaser under a decree for sale in satisfaction of a registered mortgage is entitled in priority to the purchaser under another decree for sale in satisfaction of another unregistered mortgage, although the latter mortgage be of an earlier date.

See also 14
 B. L. R. 423.

Maharajah Maheswar Sing v. Bhikha Chowdry (1) commented on.

THIS was a suit for confirmation of possession by setting aside an auction sale, and for mutation of names in the Collector's book in respect of Mouza Mahawari.

The facts were as follows :—

Raja Ramprakash Sing borrowed Rs. 5,000 from one Shiu Narayan, for which he executed a deed of mortgage, dated 7th November 1863, in favour of the latter, whereby he pledged, as security, certain properties, of which the village in dispute formed a part. The deed of mortgage was duly registered. On the 25th March 1864, a decree was obtained upon the bond, and the mortgaged properties were declared liable to be sold in satisfaction of the debt. The mouza, the subject of the present suit, was attached, on the 12th April 1864, in execution of that decree, and was purchased by the plaintiffs (appellants) in this case, on the 28th September 1864. Raja Ramprakash, it was alleged by the defendant (respondent), had executed another deed of mortgage in favour of Udit Narayan, brother of the other mortgagee, Shiu Narayan, on the 7th of June 1859. This deed was not registered. On the 1st July 1864, Udit

* Special Appeal, No. 2,940 of 1867, from a decree of the Judge of Shahabad, reversing a decree of the Moonsiff of Shahabad.

(1) Case No. 645 of 1865 5th Feb. 1866.

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Narayan instituted a suit upon this deed, against Rajah Ramprakash Sing, for recovery of the principal, together with interest, by the sale of the mortgaged properties. The defendant, Raja Ramprakash Sing, at first denied the execution of the bond, but subsequently admitted that the sum as claimed together with costs, was due from him to the plaintiff, which he covenanted to pay by instalments. A decree was accordingly passed on the 30th July 1864, in favour of Udit Narayan. In execution of the decree, Mouza Mahawari, the property in dispute, was put up to sale, and purchased by the decree-holder, Udit Narayan, himself, in satisfaction of his debt, on the 10th March 1865.

The plaintiffs (appellants in the present case had preferred a claim to the mouza, under section 246 of Act VIII. of 1859, but the Court had disallowed their claim. They, therefore, instituted this suit to set aside the sale to Udit Narayan, on the ground that the deed on which the decree was passed, was a collusive and fraudulent deed.

The defendant (respondent), Udit Narayan, denied the allegations of the plaintiffs, and contended that his deed was a genuine document, the execution of which was long anterior to that of the bond held by Shiu Narayan, and that the plaintiffs only bought the rights and interests of the judgment-debtor, subject to the lien created by the first mortgage.

The Moonsiff found that the bond held by Udit Narayan was fraudulent and collusive, and accordingly gave a decree for the plaintiffs, setting aside the second auction sale.

On appeal, the Judge being of opinion that there were no grounds for pronouncing the deed fraudulent or collusive, reversed the decision of the Moonsiff.

The plaintiffs appealed, on the ground, among others, that as the deed of mortgage to Shiu Narayan was duly registered, but the other deed of mortgage was not, though the latter professed to be earlier in date, they were entitled, in priority to the defendant, by virtue of section 2 of Act XIX. of 1843.

Baboo *Annada Prasad Banerjee* (with him Baboos *Mahesh Chandra Chowdry* and *Purna Chandra Shome*) for appellants,

in support of the above ground of appeal, cited *Srinath Bhattacharji v. Ram Kamal Gangopadhyay*(1).

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Baboo *Kali Mohan Das* (with him Baboo *Mohini Mohan Roy*) for respondent.—The second mortgage, executed in favor of Shiu Narayan, was subject to the incumbrance created by the first mortgage; and the plaintiff only purchased the property subject to the rights of the defendant as first mortgagee. All that he acquired by his purchase, was the equity of redemption of the judgment-debtor. The sale, held on the 10th March 1865, transferred the entire interest of the judgment-debtor to the defendant, not as it stood at the time of the sale, but as it had originally existed when the said property had been hypothecated to him. It was held in the Full Bench Ruling, *Maharaja Maheswar Sing v. Bhikha Chowdry* (2), that a registered deed of sale does not necessarily, under Act XIX. of 1843, invalidate a prior unregistered document when it is otherwise valid and genuine.

The judgment of the Court was delivered by

PEACOCK, C. J.—The appellants, the plaintiffs, purchased the land on the 28th of September 1864, under a decree of the 25th of March 1864. That decree was obtained on a mortgage bond dated the 7th November 1863, and declared that the premises were liable to be sold in satisfaction of that mortgage bond. The mortgage bond of the 7th November 1863 was duly registered. The defendant purchased on the 30th of March 1865, under a decree in his own favor dated 30th of July 1864. That decree was on a mortgage bond dated the 7th June 1859, which was not registered. The defendant's title, therefore, depends upon a purchase under a decree later in date than the decree under which the plaintiff purchased; but that decree, though later in date than the other decree, was for the enforcement of a mortgage bond of earlier date than the mortgage bond which was the subject of the suit under which the plaintiff purchased. But the mortgage bond which was the

(1) 10 Moore's I. A., 226.

(2) Case No. 645 of 1865, 5th Feb, 1866.

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subject of the suit under which the defendant purchased, though of a date earlier than that of the other bond, was not registered.

Now it appears to us, that a purchaser under a decree obtained upon a mortgage bond ordering the mortgaged property to be sold in satisfaction of the mortgage debt does not purchase merely the rights and interests of the debtor, but he obtains the right which the mortgagee brings to sale by virtue of the decree. The question is, whether the purchaser under a decree for sale in satisfaction of a registered mortgage of a later date, is, or is not, entitled to priority over the purchaser under a decree enforcing an unregistered mortgage of an earlier date. It appears to us, that the rights of the purchasers under such decrees must depend upon the priority of the rights of the mortgagees in satisfaction of whose charges the sales are made.

A Full Bench Ruling, *Maharaja Maheswar Sing v. Bhikka Chowdry* (1) has been referred to for the purpose of showing that a registered deed of sale does not, by virtue of the provision of Act XIX. of 1843, invalidate a prior unregistered mortgage. But that decision depended upon the very peculiar wording of Act XIX. of 1843, and the circumstances under which that Act was passed repealing Act I. of 1843 which was differently worded. That decision was, that a registered deed of sale did not invalidate a prior unregistered mortgage, not that a registered deed of sale would not have priority over an earlier unregistered deed of sale, or that a registered mortgage would not take priority of an earlier unregistered mortgage. We have no doubt that, notwithstanding that decision, a registered mortgage does take priority of an unregistered mortgage. The question turns upon section 2, Act XIX. of 1843, (2) which

(1) Case No. 645 of 1865, 5th Feb. 1866. other deed of sale or gift for the same

(2) Section 2 of Act XIX. of 1843 enacts, property which may not have been registered, and whether such second or other that "from the 1st day of May, then last past, every deed of sale or gift of lands, houses, or other real property, a memorial of which has been or shall be duly registered according to law, shall, provided its authenticity be established to the satisfaction of the Court, invalidate any deed shall have been executed prior or subsequent to the registered deed; and that from the said day every deed of mortgage on land, houses, and other real property a memorial of which has been or shall be duly registered according to

was the section on which the Full Bench Ruling was founded. These mortgages were made subsequent to the 1st May 1843 : the one on the 7th November 1863, and the other on the 7th of June 1859. It is, therefore, clear that the registered mortgage took priority over the prior unregistered mortgage, and that the purchaser, under the decree which ordered a sale in satisfaction of the mortgage which had priority, has a preferable right to the purchaser under the execution of the decree of the other mortgage. Under these circumstances, the plaintiffs are entitled to priority, the second mortgage having priority over the unregistered mortgage of earlier date.

The decision of the lower appellate Court is reversed, and the decree of the first Court upheld, with costs of this appeal, and costs of the lower appellate Court.

Before Mr. Justice Loch and Mr. Justice Glover.
LALA CHATRANARAYAN v. UBA KUNWARI.*

Reversioner—Ancestral Debt—Sale by Son's widow.

A. died leaving B., a grandson by a son deceased, C., the widow of another son deceased, and D. and E., sons, him surviving. All four held separate possession of their respective shares in the estate. C. sold her share, for Rs. 995, to pay off a debt of A.'s of Rs. 670. D. and E. having waived their rights, B. sued as reversioner to set aside the sale made by C. *Held*, that C. did no wrong in selling her share to pay off the debt, and the mere fact that she sold it for more than the amount of the debt, did not render the sale invalid.

Jitaram had four sons,—(1) Newal Sing, father of Lala Chatranarayan, the plaintiff; (2) Sibnarayan; (3) Bidyananda; (4) Prabhunarayan. Newal Sing and Sibnarayan predeceased Jitaram. Sibnarayan left a widow, Ajnas Kumari. law, and provided its authenticity be executed prior or subsequent to the established to the satisfaction of the registered mortgage, any knowledge Court, shall be satisfied in preference or notice of any such unregistered to any other mortgage on the same pro deed or certificate alleged to be had perty, which may not have been by any party to such registered deed registered, and whether such second or certificate notwithstanding.” or other mortgage shall have been

* Special Appeal, No. 750, of 1868, from a decree of the Principal Sudder Ameen of Bhagulpore, affirming a decree of a Moonsiff of that district.

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