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of Krishna Chandra's appeal. His rights and those of the present plaintiffs were distinct and separate.

Then a separate question arises as to the plaintiffs other than Bairagi Das. They contend that they were not parties, *i. e.*, they did not appear before the Survey Authorities; and as they were not parties to that award, they are not bound to bring their suit within three years from its date. In advancing this, they cut away all the ground upon which their present action is based. If they were not parties to that award, and, consequently, were not affected by it, and, further, were not dispossessed, they have no cause of action whatever. If, on the other hand, the mere award gives them a cause of action (for they have no other), then their suit must have been instituted for the purpose of getting rid of that award, and therefore they must sue within the three years prescribed by the law. It appears to us, then, that all parties are barred, and that the decision of the lower Court is right. The special appeal is, accordingly, dismissed with costs.

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June 13.

Before Mr. Justice Bayley and Mr. Justice Macpherson.

GIRIJA SINGH *v.* GIRIDHARI SINGH.

Compulsory Registration—Priority—ss. 50 *and* 100 *of Act XX. of* 1866.

See also Chap X Act III of 1877. Ind. L. R. 4 Bomb. 126. 5 Cal. 336. 7 Cal. 570. 2 All. 431. 2 N W.P 37. 12 Bomb. 241. 15 B.L R. 294. 6 Mad. 391. 1 Bomb. 10. 7 Bomb. 00. 45.

A. purchased certain lands in 1866, and duly registered his bill of sale. B. had purchased the same lands in 1855, from the persons through whom A.'s vendors made their title, and had been in possession ever since, but had not registered his bill of sale, as he might have done, under section 100 of Act XX. of 1866. A. sued to obtain possession. *Held*, B. was not bound to register, and his title was good against A.

THIS was a suit to obtain possession of 2 beegahs and 10 cottahs of jageer land, which were claimed under a kubala, or bill of sale, dated 29th October 1866.

The defendant, Gauri Sankar, alleged that he had purchased the property on the 20th Bysak 1262, F. S. (April or May 1855) and had been in possession thereof ever since under a kubala of that date.

The Moonsiff found that the sale to Gauri Sankar was not proved, and that the bill of sale was a fabrication; that,

Special Appeal, No. 2573 of 1867, from a decree of the Principal Sudder Ameen of Gya, reversing a decree of a Moonsiff of that district.

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according to Act XX. of 1866, preference should be given to a registered deed conveying immovable property, and that the unregistered deed was inadmissible, as it purported to convey property valued at more than Rs. 100; that the bill of sale of the plaintiff was a registered and a valid document. He, therefore, decreed in favor of the plaintiff.

On appeal, the Principal Sudder Ameen held that the bill of sale of the defendant was to have preference to that filed by the plantiff, as it had been satisfactorily proved by the evidence of witnesses that Kanhai Baree and Priyanath Baree, the predecessors of the plaintiff's vendors, sold the property in suit to the defendant, a long time prior to the purchase of the plaintiff; and, after receipt of the consideration-money in full, had delivered possession to the defendant; that the defendant held possession from the time of the purchase up to the present time; that, at the time of the sale to the plaintiff, the vendors, Ganpath Baree and Gopal Baree, had no right to the property. He decreed the appeal.

1 Mad. 62. 7 Bomb. A.C. 56. 3 Mad. 89. 3 B. L. R. A.C. 312. 4 B. L. R. App. 73. 6 Bomb. (A.C.) 59. B. L. R. Sup. 403. 10 B. L. R. 380 9 Bomb. 60. 12 Bomb. 179. 10 B. L. R. 380.

In special appeal it was contended, that under Act XIX. of 1843 and the present registration law, the plaintiff's registered bill of sale should have had precedence over the unregistered bill of sale set up by the defendants.

Baboo *Khettranath Bose* for appellant.

Baboo *Nilmadhab Sen* for respondent.

MACPHERSON, J.—The plaintiff (who is the appellant before us) sued for possession of certain lands which he claimed under a kubala or bill of sale, dated the 29th October 1866, and duly registered in accordance with the provisions of Act XX. of 1866. The defendants contend that the land belongs to them, and that they purchased it from the persons through whom the plaintiff's vendors make their title, in Bysak 1262 (April or May 1855), and have been in possession ever since. The defendants kubala is dated the 2nd Bysak 1262 (April or May 1855), but is not registered.

The lower appellate Court has decided in favor of the

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defendants, finding that the property was really sold to them, as alleged; that they paid full consideration for it, and that they were at once put in possession, and have been in possession ever since.

In appeal it is contended, that the lower appellate Court has erred in not giving the preference to the plaintiff's kubala, it having been duly registered, while the other is not registered at all.

Section 100 of Act XX. of 1866 enacts, that "every instrument of the kinds mentioned in sections 17 and 18, which shall have been executed in any such part of British India, before the date on which this Act shall come into operation therein, shall be accepted for registration if it be duly presented for registration, within twelve months from such date." The defendants, kubala, therefore, might have been registered under Act XX. of 1866, if it had been presented for registration within twelve months after the Act came into force in Gya. Then section 50 of Act XX. says, that "every instrument of the kinds mentioned in clauses 1, 2, and 3 of section 18 shall, if duly registered, take effect as regards the property comprised therein against every unregistered instrument relating to the same property." It is contended that, as the defendants' kubala is an instrument of the kind mentioned in clauses 1 and 2 of section 18, and as it has not been registered, as it might under section 100 have been, the plaintiff's duly registered instrument takes effect as against it.

It appears to me that whatever might be the position of the parties, if it were a mere question as to which deed was to be given effect to, the plaintiff is not entitled to recover in the present instance. The defendants' kubala was duly executed, and, according to the law then in force, it was in no degree essential that it should be registered; the purchase-money was paid in full; and possession was then given, and has ever since been held under it. The transfer of the property to the defendants was complete, and nothing was wanting to perfect it according to the law then in force. When it is found as a fact that a *bonâ fide* purchase has been followed by eleven years' possession, the position of the purchaser is far stronger than if he

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were seeking possession for the first time under his deed of sale, and the question is not merely one as to the effect to be given to the deed as against a deed of later date registered under Act XX. of 1866. I do not think that section 50 of Act XX. of 1866 is to be construed as vitiating all titles acquired prior to the passing of that Act, unless the instruments, on which they rest, are registered under section 100. Had such been the intention, registration of old deeds would have been made compulsory, and it would have been declared expressly that, unless registered, instruments registered under Act XX. of 1866 should take effect before them. I think that section 50 must be read as applying to instruments, the registration of which is optional under section 18, but not as applying to instruments registered under section 100.

I think, therefore, that this appeal ought to be dismissed with costs.

BAYLEY, J.—I concur in the above judgment, and the reasons for it. The transaction took place under the old law. I do not think the deeds then executed can be set aside if *bonâ fide* in every way, and supported by long possession as this is. I also would dismiss this special appeal.

Before Mr. Justice Loch and Mr. Justice Glover.

KEDARNATH MOOKERJEE *v.* MATHURANATH DUTT.*

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Limitation—Relinquishment of Jote by Minor's Guardian—Act VIII. of 1859, *s.* 348.

A. sued B. to recover possession of a hereditary jote, of which he alleged he had been dispossessed by B., during his minority. B. raised the defence of limitation, and relinquishment by A.'s grandmother and guardian. The Moonsiff held, that the suit was not barred, on the ground that it had been brought within 3 years from the date on which A. had attained his majority, but decided against A. on the merits. On appeal, the question of limitation was not raised, but on the merits, the Judge also found against A.—On special appeal by A., B. took an objection under section 348 of Act VIII. of 1859, that A.'s suit was barred. *Held*, that B. could not take the objection at that stage. Also *held*, that to make the relinquishment, if any, valid against A., it ought to have been shown that it was for A.'s benefit. Decision of the lower Court reversed.

M. Muniruddeen v. *Mohamed Ali* (1) distinguished.

* Special Appeal, No. 2809 of 1867, from a decree of the Judge of Berhampore, affirming a decree of a Moonsiff of that district.

(1) 6 W. R., 67.