

APPELLATE JURISDICTION (a)
Special Appeal No. 437 of 1866.

G. NARASANNA.....*Special Appellant.*

R. GÁVAPPA.....*Special Respondent.*

Plaintiff sued for possession of land under an unregistered deed of sale. 4th Defendant claimed the same land under a deed of subsequent date, registered after the commencement of the suit. The latter deed was found to be fraudulently got up between the defendants.

Held, that the registration of such a document does not give it the effect of invalidating a former unregistered deed of sale.

The words in Act XIX of 1843, "provided its authenticity be established to the satisfaction of the Court" were introduced in order to prevent any supposition that registration would give to a merely fictitious transaction any effect which it would not otherwise possess.

1867.
 January 5.
 S. A. No. 437
 of 1866.

THIS was a special appeal from the decision of P. Srinivása Rán, the Principal Sadr Amin of Bellary, in Regular Appeal No. 135 of 1864, reversing the decree of the District Munsif of Bellary in Original Suit No. 22 of 1864.

The Advocate General for the special appellant, the fourth defendant.

Parthasarathi Ayyangar for the special respondent, the plaintiff.

The facts sufficiently appear in the following

JUDGMENT :—The plaintiff in this suit claims possession of a piece of land under a deed of sale executed on the 3rd November 1863, which has not been registered; and the 4th defendant claims the same land under a deed of sale of the 14th January 1864, registered after the commencement of this suit.

The District Munsif held the plaintiff's deed of sale to be a forgery and dismissed the suit.

The Principal Sadr Amin reversed that decree—holding the plaintiff's deed of sale to be genuine, and the fourth defendant's deed of sale to be fraudulent, finding expressly that "it was got up collusively between him and the other defendants with a fraudulent motive." In other words

(a) Present :—Bittleston, Acting C. J., and Ellis, J.

it was a fictitious and not a real transaction ; and the deed was not intended by the parties to it to have any effect in passing the property from the supposed vendor to the supposed vendee.

1867.
January 5.
S. A. No. 304
of 1866.

The question raised by this special appeal is whether under such circumstances the registration of the document gives it the effect of invalidating any former unregistered deed of sale ; and the Advocate General, on behalf of the Special Appellant, argued that the Court could look only to the genuineness of the document, and that if the registered document was proved to have been executed by the parties, it must be held to invalidate any former deed of sale not registered.

The words are the same in Act XIX of 1843 and in Regulation XVII of 1802, Section 6, "provided its authenticity be established to the satisfaction of the Court," and we agree with the Principal Sadr Amin that the word "authenticity" so used means something more than the mere fact of its execution by the parties.

The *factum* of execution by the parties is that which the Registrar has to enquire into before registration ; it is to be proved by oath before him (Section 9 of the Regulation), and we think that the words " provided its authenticity be established to the satisfaction of the Court" were introduced in order to prevent any supposition that Registration would give to a merely fictitious transaction any validity or effect, which otherwise it would not possess. Registration is made a condition, without which a genuine transaction may be rendered invalid ; not an instrument whereby a fictitious and fraudulent transaction may be rendered operative.

This question moreover is concluded by authority ; for upon reference to the proceedings in Special Appeal 110 of 1866 we find that the plaintiff there sued upon an unregistered mortgage bond, that the defendant claimed under subsequent registered mortgage bonds which the Civil Judge found to be fraudulent and collusive ; and that the Civil Judge held that the registration gave no legal

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validity to documents which were the result of fraudulent collusion. The case first came on before the Chief Justice and Mr. Justice Collett, who directed an issue whether a consideration of any kind passed between the first and second defendants for either of the two mortgage bonds; and afterwards, upon the finding of the Civil Judge that no consideration passed, the case came on again before Mr. Justice Innes and Mr. Justice Collett, who therefore dismissed the appeal and confirmed the decree of the Civil Judge.

In the present case we do not think it necessary to send any issue for trial by the Lower Appellate Court, as the Principal Sadr Amin has already found the deed set up by the fourth defendant to be wholly fictitious.

Appeal dismissed.

APPELLATE JURISDICTION (a)

Regular Appeal No. 76 of 1866.

RÁMASÁMI PADEIYÁTCHI and another..... *Appellants.*

VIRASÁMI PADEIYÁTCHI..... *Respondent.*

The force of *res judicata* attaches not only to the bare condemnation or discharge of a defendant, but to all the objective grounds distinctly found by the Judge as the basis of his decision.

The proposition that everything acquired by a woman during coverture is the property of her husband has no foundation in Hindu Law.

1867.
January 7.
R. A. No. 76
of 1866.

THIS was a Regular Appeal from the decision of G. Ellis, Civil Judge of Cuddalore, in Original Suit No. 1 of 1866.

This suit was brought for ejectment and removal of an attachment, and for a declaration of right of patta to the land claimed.

The plaintiff declared that his father Lutchmana Padeiyáchi, Tándavaráya Padeiyáchi and Násika Padeiyáchi were undivided brothers. Plaintiff's father died about thirteen years before the institution of the suit, and his two uncles in 1855 and 1856 without issue. The 1st defendant before being married to Tándavaráya Padeiyáchi was the widow of one Árimuttu Padeiyáchi, whose son the 2nd defendant was.

(a) Present :—Holloway and Innes, J. J.