

## APPELLATE JURISDICTION (a)

*Special Appeal No. 79 of 1866.*MANGAMMA.....*Appellant.*TIMMAPAIYA .....*Respondent.*

No action will lie against a vendor alone to compel him to procure the transfer by the Revenue Authorities to the name of the vendee of the Registration of the property sold. The Collector (the Registering Officer) must be made a party to the suit.

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THIS was a special appeal from the decision of Srinivása Row, the Principal Sadr Amin of Mangalore, in Regular Appeal No. 342 of 1863, reversing the Decree of the District Munsif of Kandapur, in Original Suit No. 98 of 1859.

The plaintiff brought this action to have transferred to his name the registry of certain land enjoyed by him under a mulgani chit executed to him by the 1st defendant. The 1st defendant admitted the plaintiff's claim. The Lower Courts treated the case as one to be decided upon the question of title alone, the Court of First Instance dismissing the suit and the Lower Appellate Court decreeing for the plaintiff. The 6th defendant appealed.

*Srinivasa Chariyar*, for the Appellant, the 6th defendant.

*Parthasarathy Aiyangar*, for the respondent, the plaintiff.

The Court delivered the following judgments.

INNES, J :—The question raised in this special appeal is whether an action will lie against a vendor alone to compel him to procure the transfer by the Revenue Authorities to the name of the vendee of the registration of the property sold.

(a) Present Innes and Collett, J. J.

The object of Revenue Registration was solely the protection of the Government Revenue, but one of its effects is to protect the vendee of a previously registered holder.

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As I read Section III of Regulation XXVI of 1802 with the preamble of the Act, unregistered transfers of land forming a portion of a holding were to be of no force or effect to exempt the entire holding from being held answerable for arrears of kist due upon it as a whole. So that a vendee of a portion would, unless he had obtained registration of the transfer to him, be liable to have this portion sold by Government for arrears due by the vendor upon the rest of the holding.

During the course of the argument I expressed my opinion that Registration in its effects was solely a matter of convenience to the Government, and that it could be of no advantage to the vendee to enforce Registration. In this I see that I was wrong, as without Registration the vendee is clearly at a disadvantage. But the question still remains whether a decree in such a case as the present could be executed, because, if it could not, it must be clear that the action would be without an object, as the plaintiff could derive no benefit under it, and that such an action therefore could not be entertained.

The only form which the decree could take would be to direct that the vendor do procure the transfer of the Registry. But this is a matter which would not be altogether within the control of the vendor. It is true that the pressure of the Court might be so far successfully exerted, as to induce him to make an application to the Collector for transfer of Registry, but this it would still be within the discretion of the Collector to withhold. And if the Collector refused, as he might do, the Court would be left without the means of executing its decree. I think that in suits to procure transfer of Registration no action will lie, unless the Collector (the Registering Officer) be made a party. Where this is done, the Court can have no difficulty in executing its decree, whereas in cases like that now before us, in which the vendor would be the sole

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person subject to the Court's decree, such a difficulty would always exist and could not be overcome.

I think therefore that the Decree of the Principal Sadr Amin should be reversed and the plaintiff's suit be dismissed with costs.

COLLETT, J.—I am of the same opinion. I am aware that a majority of this Court has lately held that Section 8, Regulation XXV of 1802, was not enacted with a view merely to the security of the public revenue and for revenue purposes; and Section 3, Regulation XXVI of 1802, may be said to be the corresponding enactment in regard to lands not permanently settled. But I am clearly of opinion that whatever difficulties may attend the interpretation of Regulation XXV, there are none such in regard to Regulation XXVI. It is clear to me, as well from the preamble as from the terms of Section 3, that it is as against the Government alone, and for the purpose only of exemption from liability to revenue, that a transfer without change of registry is declared "not to be valid." The machinery for registering lands and issuing pattas exists only for revenue purposes. The patta does not create any interest or estate in the land, however valuable it may in some districts be as evidence of possession. In some districts, as for instance in Malabar, the patta is not practically of any value as indicating that the holder of it has any title to the land. The duty of registering transfers and issuing pattas is merely one of the administrative functions of revenue officers, and the plaintiff's remedy is to apply to the proper revenue authority. I may add that the late Sadr Court in their Circular Order of the 17th September 1832, seem to have held that the registry and patta have nothing to do with the title, and I believe that for a long course of years this has been the view taken by both the Courts and the Revenue Authorities.

In the present case the land, said to have been sold to the plaintiff, is a separate holding separately assessed, and I think it unnecessary to say what course would be open to the purchaser of a portion of a holding. There seems to

have been as yet no application made to the revenue authorities or refusal by them to change the registry. Ostensibly at least the sole purpose of this suit is to obtain a change of registry, and if the plaintiff upon the facts alleged by him is not entitled to or cannot obtain from this Court such relief as is alone sought for, his suit must be dismissed, and it is not necessary to consider or decide the questions of title considered by the Courts below.

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*Appeal allowed.*

APPELLATE JURISDICTION (a)

*Special Appeal No. 164 of 1866.*

TANJI and others.....*Appellants.*

NĀGAMMA.....*Respondent.*

The period of limitation for a suit to redeem a mortgage of immovable property is (by Cl. 15, Section I, Act XIV of 1859) 60 years, and this apparently without reference to the nature of the title the mortgagee in possession is asserting.

*Semble*, it makes no difference that the hostile possession is supposed to have commenced on a claim of the defendant to a title altogether inconsistent with the mortgage.

THIS was a special appeal from the decision of Srinivāsa Row, the Principal Sadr Amin of Mangalore, in Regular Appeal No. 647 of 1864, reversing the decree of the Additional District Munsif of Mangalore in Original Suit No. 134 of 1863.

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The suit was brought to redeem a mortgage of land made in 1814 by Timmappa Setti, a deceased member of the undivided family of the plaintiffs, to the 1st defendant's father. The Principal Sadr Amin dismissed the plaintiff's claim, as barred by the statute of limitations, on the following grounds. 'The circumstance that the disputed land is in the possession of the 2nd defendant ever since 1839 is undisputed. Consequently, it appears that in opposition to the mortgage right asserted by the plaintiffs, the 2nd defend-

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