

ORDER :—Rejected : by the terms of the bond if the regulated 12 per cent. interest is not paid, the penalty is an increase to 18 per cent.—the collection by Court's warrant refers merely to the principal.

1866.
April 21.
C. P. No. 50
of 1866.

Miller, for the petitioner.

Advocate General, for the counter-petitioner.

ORDER :—We are clearly of opinion that the Civil Judge was in error in rejecting the petition. The agreement at the time of registration was that the obligation of the bond should be enforced under Sections 51 and 52 of the Registration Act and one thing to which by the bond the obligor was obliged, was to pay the sum of Rupees 150 at the end of every month; and this sum became at the end of each month, under the terms of the bond, a debt for which the obligee might ordinarily have sued. He was therefore entitled by virtue of the special registration to move for execution in respect to the two sums of Rupees 150, which had become due at the time of his presenting his petition. The order of the Civil Judge is reversed ; the petition must be restored and execution proceeded with in the ordinary course.

Ordered accordingly.

APPELLATE JURISDICTION (a)

Special Appeal No. 46 of 1896.

KRISHNASAMI PILLAI and another.....*Appellants.*

VENKATACHELLA AIYAN and others.....*Respondents.*

A registered deed of sale, though subsequent in date, invalidates as against the registered purchaser a prior deed of sale unregistered, notwithstanding that notice of the prior deed be alleged.

Act XIX of 1843, Section 2, construed.

THIS was a special appeal from the decision of C. N. Pochin, the Acting Civil Judge of Madura, in Regular Appeal No. 243 of 1864, confirming the decree of the Principal Sadr Amin of Madura, in Original Suit No. 69 of 1863.

1866.
April 30.
S. A. No. 46
of 1866.

O'Sullivan, for the appellants, the plaintiffs.

(a) Present : Holloway and Collett, J. J.

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Srinivasa Chariyar, for *Rajagopala Charlu*, for the 12th respondent, the 12th defendant.

The facts of the case sufficiently appear from the following

JUDGMENT:—This was a suit by plaintiffs, claiming under a deed of sale, dated February 1856, and registered, to redeem lands mortgaged to fourth and fifth defendants.

The first, second and third defendants were the vendors, and the twelfth defendant resists the plaintiffs' suit on the ground of a prior sale to himself in 1853. The deed evidencing this sale was unregistered.

The Principal Sadr Amin found that at the period of the plaintiffs' purchase they were aware of the prior sale to the twelfth defendant. He considered, therefore, that they had by such knowledge lost the priority which the Registry Acts would have given them, their purchase with such knowledge being fraudulent and collusive.

The Civil Judge in appeal affirmed the decree, finding both sales on have taken place and the plaintiffs not to have been ignorant, at the time of their purchase, of the sale to the twelfth defendant.

These findings, therefore, are that the vendees under the registered conveyance were aware, at the time of their purchase, of the prior purchase and of the unregistered conveyance.

The question is, whether, on the true construction of Regulation XVII of 1802 and of Act XIX of 1843, the circumstance of notice is at all material.

Until the passing of the repealed Act I of 1843, Clause third, Section VI, Regulation XVII of 1802, subjected the Indian Regulation to the construction put by Lord Hardwicke in *Le Neve v. Le Neve*, (II W. and T. L. C. 23) upon the English Act. That construction was that the Act was made for the protection of *bona fide* purchasers, that he who takes with notice is a purchaser *mala fide*, and the Registry Acts will therefore not give him priority over the purchaser

under an unregistered conveyance prior in point of time. Several eminent Judges, Sir W. Grant in *Wyatt v. Barwell*, (19 Ves. 435) and Sir J. Romilly, M. R. in *Ford v. White*, (XVI Bea. 120) have lamented that the policy of the Registry Acts was so infringed by this decision. The doctrine of that case was, however, embodied in the original regulation, but the clause containing it was expressly repealed by Act I of 1843, and Act XIX of 1843, which repealed Act I of 1843, expressly provided in Section II, in language quite unmistakeable, that a registered deed of sale, though subsequent in date, should invalidate a prior deed of sale unregistered, and further went on to provide that it should do so, despite any knowledge or notice alleged to be had by any party to such unregistered deed. The meaning is perfectly clear, although the language is not free from objection. By invalidating the deed, of course, is meant invalidating it as against the registered purchaser, and the effect therefore is to do what the Irish Act is decided to have done, give to each deed priority according to its appearance on the register (*Bushell v. Bushell*, 1 Sch. & Lef. 98.)

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It is clear upon these provisions that the claimant under the registered conveyance must prevail. The decree of the Lower Court must be reversed and a decree be given for plaintiffs on payment to fourth and fifth defendants of the sum due upon the mortgage made by first, second, and third defendants, to the fourth and fifth defendants. There will be no costs of this appeal, but there seems no reason for interfering with the order of the Principal Sadr Amin, that all the costs in the Original Court should be paid by first defendant.
