

1872.
June 27.
R. A. No. 34
of 1872.

The plaintiff is not entitled to question the decree in Suit No. 16 of 1867, he having bought "pendente lite," and, therefore, can have no enquiry whether there was in fact such a mortgage as found in that suit, or whether the effect of the decree in that suit was to establish a mortgage as existing in the view of a Court of Equity, as from that decree, and not to decide that such mortgage existed prior to his purchase.

In the view we take it is not necessary to consider what should have been the priorities between the plaintiff and the 2nd defendant, if no suit had been pending. Therefore we do not refer to the principle contained in 4, M. H. C. R., 434.

We dismiss the appeal with costs.

Appellate Jurisdiction(a)

Regular Appeal No. 46 of 1872.

SINIA TE'VAR.....Appellant.

RAJAH STRIMANTA RANGASA'MI AIYANGA'R }
BA'HA'DU'R.....} Respondent.

Decrees on two specially registered bonds were obtained against plaintiff under Section 53 of the Registration Act XX of 1866. He petitioned the Civil Court, under Section 55, to set aside these decrees, on the ground that the bonds were executed on consideration of something to be done by the obligee, who had wholly failed to perform his part. The Judge dismissed the petitions, because he thought the matter was a more proper one for investigation in a regular suit. His successor dismissed the suit when brought, because, in his opinion, it did not lie. *Held*, on appeal (by the majority of the Court) that no suit lay. The effect of Sections 52 to 55 is to make a decree under them of precisely the same validity as any other decree, to make it enforceable by the same process, but to render it impeachable on the special grounds referred to in Section 55. *Held*, also, that the matters alleged were not such as, if proved, would have justified the setting aside of the decree. The special circumstances must be such as to show a vice in the mode in which the contract to submit to decree and the special registration were obtained, and an infirmity in the original obligation will not do.

1872.
August 23.
R. A. No. 46
of 1872.

THIS was a Regular Appeal against the decision of F. M. Kindersley, the Civil Judge of Tanjore, in Original Suit No. 20 of 1871.

The suit was brought to set aside two decrees passed summarily against the plaintiff under Section 53, Act XX of 1866.

(a) Present : Morgan, C. J., Holloway and Innes, JJ.

The plaintiff alleged that defendant had offered to use his best endeavours, on behalf of Kámákshi Bayi Sahiba, to establish the adoption of one Surfoji Sahib as the son of the late Rajah of Tanjore, and to recover the ráj for him, and that defendant also promised that the Mocassa villages should be leased to plaintiff. In return for this the plaintiff, on 16th August 1869, executed to defendant two specially registered bonds for Rupees 26,767-12-3 and Rupees 37,225, respectively, the said bonds being executed for no consideration paid to plaintiff, but as a guarantee and security by plaintiff, on behalf of Kámákshi Bayi Sahiba, that defendant should be reimbursed for any expenses he might incur in prosecuting his endeavours to establish the adoption and recover the ráj. That defendant made no endeavour to establish the adoption or recover the ráj, and that, therefore, the decrees passed summarily under Section 53 of the Registration Act of 1866, should be set aside.

1872.
August 23.
R. A. No. 46
of 1872.

The defendant pleaded that the bonds recited consideration, and that the plaintiff was concluded by the terms of the bonds themselves, and further that the plaintiff was false. He also objected to the order passed by the Civil Court on Miscellaneous Petitions 228 and 229 of 1871 (petitions presented by plaintiff under Section 55 of the Registration Act) as illegal, the Civil Court having stayed execution without setting aside the decrees, and without any special circumstances.

Civil Petitions Nos. 228 and 229 of 1871, were applications by plaintiff to the Civil Court of Tanjore, praying that the decrees in Special Registration Suits Nos. 22 and 23 of 1870 might be set aside under Section 55 of the Registration Act XX of 1866. They alleged the same facts as the plaintiff in the present suit and were rejected, the then Civil Judge, in the order of rejection, making the following observations:—"The question which I have now to consider is, whether upon these averments I should hold any enquiry, or whether it would not be more proper for me to make some order suspending the operation of the decree, and refer one or other of the parties to a regular suit. It seems to me that the latter is the proper course, and that it is the petitioner and not the plaintiff (in the registration suits) who should be left to bring

1872.
August 23.
R. A. No. 46
of 1872.

the suit. It could never have been the intention of the Legislature that any substantial issue like that now raised should be decided summarily without an appeal..... There seems to be a substantial and a *bond fide* question to be decided, and it should be determined in a regular suit once for all, subject only to the ordinary right of appeal. I might, of course, say that this is a special circumstance warranting the setting aside of the decree altogether, but it seems to me that would throw an undue burden on the plaintiff, who has already had to pay one-fourth of the full stamp on which the plaints will have to be written. The length of time which intervened between the original instruments and their renewal and special registration is a very strong point against the petitioner's contention, and the special registration itself is almost enough, in my opinion, to relieve plaintiff from any further duty and shift on to petitioner the burden of suing..... The existence of the decrees will not prejudice petitioner in any way, for I conceive that an action will clearly lie to set them aside. Nothing has been shown to the contrary, and there has been no cause of action heard or determined, nor indeed anything which can be called a suit between the parties. I therefore order that these applications be, and the same hereby are, rejected, without prejudice to petitioner's right to bring a regular suit, and that further execution of the decrees in the so-called Original Suits Nos. 22 and 23 of 1870 be stayed for three months, provided only that nothing in this order shall be construed as affecting plaintiff's right to attach any property belonging to petitioner."

Accordingly the present suit was brought. The Civil Judge delivered the following judgment, dismissing the suit, at the hearing for the settlement of issues :—

"Before going into the merits of the case, there is, I think, an objection which is fatal to the plaintiff's case : and that is, that no suit will lie to set aside the decrees passed summarily under Section 53 of the Registration Act of 1866. Section 55 of that Act seems to me to lay down the procedure which is to be followed when the decrees are sought to be set aside; and no other procedure is, in my opinion, allowable. The decrees, though passed summarily, have all the

effect of regular decrees, and, therefore, conclude the judgment debtor, unless he can show special circumstances under Section 55.

1872.
August 23.
R. A. No. 46
of 1872.

The parties when specially registering bonds agree that the bonds shall be summarily enforced according to the provisions of the Registration Act, and part of those provisions are that there shall be no appeal from the decree or order of the Court. The plaintiff's counsel now argues that if plaintiff is not allowed to sue to set aside the decrees, and if the Court, under Section 55, refuse to set them aside, he is debarred from all remedy; that is to say, he seeks, by bringing a regular suit, to break through and render null and void the special provisions of the Registration Act to which he voluntarily made himself subject.

The plaintiff's counsel further argued that the Civil Court had, in the orders passed on the Miscellaneous Petitions 228 and 229 of 1871, allowed plaintiff to bring this suit. Even if the order of the Civil Court were to that effect, it could not give plaintiff a right of action which he did not otherwise possess. But the order is merely an order rejecting the plaintiff's applications under Section 55, and stating that they are rejected without prejudice to any right the petitioner might have of bringing a regular suit, and the order does not decide the point whether plaintiff has such a right.

I think that to allow plaintiff to bring this suit, would be directly opposed to the provisions and intentions of Sections 52 to 55, Act XX of 1866, and that until the decrees are set aside under Section 55 of the Act, the plaintiff is concluded by them as much as if they were regular decrees, and is, therefore, precluded from bringing this suit; and for these reasons I dismiss this suit, but, under the circumstances of the case, the defendant not having taken this objection, and plaintiff having been doubtless misled by the Civil Court's order, I think each party should bear his own costs."

The plaintiff appealed upon the grounds that he was clearly entitled in law to sue to set aside the summary decisions passed against him, and that the Civil Judge had no authority to set aside the order of his predecessor granting permission to institute a regular suit.

1872.
August 23.
R. A. No. 46
of 1872.

The appeal was first heard on the 29th May 1872 by the Chief Justice and Mr. Justice Innes, and in consequence of a difference of opinion was referred to a Full Bench.

Rāma Rau, for the appellant, the plaintiff.

Ananda Charlu, for the respondent, the defendant.

The Court delivered the following

JUDGMENT:—In this case the former Judge dismissed an application under Section 55, because he thought the matter was a more proper one for investigation in a regular suit. His successor has dismissed that suit because, in his opinion, it does not lie. Even if that view is correct, it would probably be right to treat the present suit as a continuation of an investigation which was only interrupted because of the Judge's opinion as to the applicability of a suit. There are, therefore, two points.

1. Does a regular suit lie.
2. Are the matters alleged such as, if proved, would have justified the setting aside of the decree.

As to the first—In the opinion of the majority of the Court, the effect of the Sections 52 to 55 is to make a decree under them of precisely the same validity as any other decree, to make it enforceable by the same process, but to render it impeachable on the special grounds referred to in Section 55. The intent was, and the words effectuate it, to make a registered contract to pay money, with the registered contract to submit to a decree under the Act, a substitute for the ordinary securities afforded by regular procedure. To say that a regular suit lies because the case has not been heard and determined, is to overlook the fact that the object is to cause it to be determined without hearing. The effect is precisely the same as final judgment signed under 18 & 19 Vict. c. 67. or a decree under the corresponding Indian Act.

The second question is whether the decree so obtained is impeachable on the grounds on which it is sought by the present plaintiff to impeach it. The ground is that the bonds were executed on consideration of something to be done by the original plaintiff, who has wholly failed to perform his

part. This would, undoubtedly, if the matter had not proceeded beyond a contract, have been a sufficient defence, but it seems to the majority of the Court that an infirmity attaching to the original obligation is no more reason for setting aside a decree obtained under this Act than it would be for setting aside one obtained by the regular procedure. It seems to us that the Legislature have said :—You can use your own discretion as to registering, but if you do register a contract creating an absolute obligation to pay money, and you further register a contract that it shall be enforced against you without enquiry, judgment shall be given against you. We will not permit you to say that the obligation was not absolute but conditional, but if your assent to the registration itself has been procured by means which ought to invalidate the obligations flowing from those two contracts, we will hear you, and, under Section 55, leave the plaintiff to whatever remedy he can get by a suit in the usual form.

1872.
August 23.
R. A. No. 46
of 1872.

We are of opinion that the special circumstances must be such as to show a vice in the mode in which the contract to submit to decree and the special registration were obtained, and that an infirmity in the original obligation will not do. We, therefore, dismiss the appeal, but in consequence of the difference of opinion, without costs.

Appellate Jurisdiction(a)

Regular Appeal No. 62 of 1872.

PONNAMBALA MUDALIYAR..... *Appellant.*
VARAGUNA RA'MA PANDIA CHINNATAMBIAR... *Respondent.*

A suit brought for the removal of defendant from the management of certain charitable trusts on the ground of malversation was dismissed by the Civil Judge, because he considered that the provisions of Regulation VII of 1817 required that application should first be made in such cases to the Board of Revenue. *Held*, on appeal, that the Civil Judge was wrong. Regulation VII of 1817 is clearly intended to be supplementary of existing remedies, and the Courts had unquestionably jurisdiction in such cases prior to its enactment. The expression in Section 14 of the Regulation is not intended to limit the jurisdiction of the Courts to the cases contemplated in it, but rather to provide against the finality of erroneous orders that may be passed by the Board of Revenue under the Regulation.

THIS was a Regular Appeal against the order of F. C. Care, the Acting Civil Judge of Tinnevely, dated 9th December 1871.

1872.
October 21.
R. A. No. 62
of 1872.

(a) Present : Morgan, C. J. and Innes, J.