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 C. M. S. A.
 No. 221 of
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The plaintiff appealed on the grounds that the decree of the Munsif was a perfectly legal one: that if he had no authority to pass a decree in accordance with the terms of the rázináma, then that decree ought to have been appealed against; that the Civil Judge had no authority to set it aside in a summary proceeding, and that the defendant himself did not originally object to the enforcement of the rázináma as a decree.

Sanjiva Rau, for the appellant.

The Court delivered the following

JUDGMENT:—In this case it appears that a suit was compromised by a rázináma, which required that a decree should be passed in conformity with its terms. The District Munsif, instead of passing a regular decree, endorsed an informal order on the rázináma; and five years afterwards, upon an application for execution, the District Munsif made a formal decree, and gave orders for its execution.

Upon appeal in execution the Civil Judge considered this procedure erroneous, and ordered that the decree should not be acted on, but the parties be referred to a suit.

We think that it was competent to the District Munsif to make a decree in pursuance of the rázináma, on the application of the party interested, even after an interval of five years. And the decree having been properly made, the Judge had no authority to direct that it should not be acted on. We must, therefore, reverse the order of the Civil Judge and remit the record to the Original Court for execution. The respondent must pay the appellant's costs in this and the Lower Appellate Court.

Appeal allowed.

Appellate Jurisdiction(a)

Regular Appeal No. 34 of 1872.

MANUAL FRUVAL.....Appellant.

SANAGAPALLI LATCHMIDE'VAMMA } Respondents.
 and another..... }

Plaintiff purchased at a sale by the District Munsif's Court of Guntur, held on the 22nd of December 1868, the interest of one F. G. in a cotton screw at Guntur. Previous to this, on the 31st July 1867, the husband of the 1st defendant in the present suit filed a plaint, No. 16 of

(a) Present: Kernan and Kindersley, JJ.

1867, in the Civil Court of Guntúr, against the representatives of F. G. (who was then dead) praying to be declared entitled to be treated as mortgagee of the shares of F. G. in that and another screw for Rupees 1,696-9-0, and that the amount might be raised by sale of those shares. Issues were settled, the 4th of which was—"Was there a tangible mortgage of real property or shares in real property"—And the decree, made on 30th September 1869, found this issue in the affirmative and declared that the amount sued for should be paid from the aforesaid shares hypothecated to the plaintiff in that suit. At a sale in execution of this decree the share of F. G. in the screw at Guntúr was purchased by 2nd defendant (in the present suit) on the 18th of February 1870. The present plaintiff objected to the sale and was referred to a regular suit. Accordingly he brought the present suit to set aside the decree in No. 16 of 1867 as regards the share of F. G. in the screw at Guntúr, to cancel the attachment and sale to 2nd defendant and for possession of the share. 1st defendant pleaded that plaintiff at the date of his purchase had notice of the pendency of the Suit No. 16 of 1867 and of the mortgage claim. The plaintiff denied the fact of the mortgage and its regularity and issues were framed, the 1st of which was—"whether plaintiff knew that the Suit No. 16 of 1867 was under hearing when he bought the $\frac{1}{3}$ share, and that there might be declared a hypothecation to the late husband of the 1st defendant in this suit." The Civil Court, treating the claim of the plaintiff in No. 16 of 1867 as a mortgage, held that, as it was prior in point of time to the sale under the Munsif's decree it should prevail against plaintiff's claim—even though plaintiff had not notice. The Court also found that plaintiff had notice. Upon appeal, *Held*, that as the purchase made by the plaintiff was made while the Suit No. 16 of 1867 was pending, in which a mortgage was alleged and payment was prayed out of the property, the plaintiff was bound by the decree made therein, whether he had or had not notice, nor could he in any way question that decree.

THIS was a Regular Appeal against the decree of R. B. Swinton, the Civil Judge of Guntúr, in Original Suit No. 1 of 1871.

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Plaintiff (the appellant) sued Latchmidévamma (widow of one Sanagapalli Venkatáchellam) and another, to have cancelled the decree in Suit No. 16 of 1867, on the file of the Civil Court of Guntúr, as far as it affected the one-third share of the late F. Guidamore which was obtained by the late husband of the 1st defendant, and to have cancelled the attachment and sale of the said one-third share to the 2nd defendant, and to be put in possession of the same.

The plaintiff stated that the late F. Guidamore and himself and others had shares in the screw house erected at Guntúr in the yard of one Kidambi Venkata Charlu, and that the one-third share of Mr. Guidamore was purchased on the 22nd December 1868 by the plaintiff's company, of which company the plaintiff only survived; that the late husband of the 1st defendant brought Suit No. 16 of 1867, for a debt due by

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F. Guidamore, to which suit the plaintiff was no party, and obtained a decree on the 30th September 1869, in execution of which the one-third share the plaintiff had purchased was taken in execution.

The 1st defendant answered that her late husband purchased the whole of the screw and paid Rupees 4,500; and gave one-third share in it to the firm of Fruval, Duminy and Co., and upon the late Mr. Guidamore requiring a share, he also gave him a share, but subject to a mortgage to the defendant of it, until Mr. Guidamore paid fully for it; that Mr. Guidamore died before the debt was discharged, and the 1st defendant's husband brought a Suit No. 16 of 1867 for the recovery of the money advanced; and that although this plaintiff knew all the circumstances connected with this suit, the plaintiff did in December 1868 purchase the share of Mr. Guidamore, improperly sold at a Court auction held by the District Munsif of Guntúr at the requisition of the District Munsif of Cocanada, and that the 1st defendant's husband intimated the fact of his mortgage while the sale was going on, and that the plaintiff bought it with full knowledge, and that the mortgage right which was decreed in September 1869, could not thereby be affected.

The 2nd defendant answered that the plaintiff purchased the one-third share in the screw knowing that it was mortgaged to the husband of the 1st defendant, and that a suit was pending in the Civil Court; and that he (2nd defendant) after the decree of the said Court, on the 18th February 1870, purchased Mr. Guidamore's one-third share and obtained a sale certificate, and that plaintiff then being silent now brought this suit.

The following issues were framed:—

I.—Whether or not plaintiff knew that Suit No. 16 of 1867 was under hearing in the Civil Court of Guntúr when he purchased the one-third share, and that by a decree in that suit there might be declared to be a hypothecation to the 1st defendant's husband of the one-third share of the screw.

II.—Whether he ought to have “claimed,” under Section 73 of the Civil Procedure Code, some interest in the subject-matter of the suit.

III.—Whether he ought to be heard now to allege that there was no mortgage as decreed.

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The judgment of the Civil Judge contained the following:—

“I have read from the records of the execution in No. 16 of 1867, a petition dated 16th February 1870 by Mr. Fruval, alleging that the plaintiff, in attaching the defendant's property, caused also to be attached the share which he had purchased at the Munsif's Court auction, and alleging that as a resident of Masulipatam he was not aware of the sale proclamation, and requesting the release of the property. By an order made on the 17th, the petitioner is referred to a regular suit, as the objection ought to have been made earlier.

The case reported at page 434 of Vol. IV of the Madras High Court Reports has been cited for the position that notice was not necessary to the plaintiff of the prior mortgage.

A further issue is raised “whether or not notice of the prior mortgage was necessary.”

Under Section 145 of the Civil Procedure Code, this suit may be disposed of after having heard the pleaders; I find that notice was not necessary, and that from the very strong probability of the case; from the absence of Mr. Fruval after a suggestion at last hearing that he should be here; from the presence of his partner Mr. Vally,—the plaintiff knew that there was then, when he made the auction purchase, a suit in this Court founded on an hypothecation of the share of Mr. Guidamore; a decision on the other issues is not necessary. The suit is dismissed with costs.”

The plaintiff appealed on the following grounds:—

1. The plaintiff's rights are not affected by the decree in Original Suit No. 16 of 1867, on the file of the Civil Court of Guntúr, to which he was no party.
2. There ought to have been an investigation in this suit as to the mortgage or lien on the property in dispute alleged by the defendants and denied by the plaintiff.
3. The purchase of the property in dispute by the 2nd defendant in execution of the decree in the said Original Suit

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No. 16 of 1867 is invalid against the prior purchase by the plaintiff in execution of a prior decree.

Handley, for the appellant, the plaintiff.

J. H. S. Branson, for the respondents, the defendants.

The Court delivered the following

JUDGMENT:—The plaintiff appeals against the decree of the Court below, dated 16th September 1871, which dismissed this suit. This suit was filed 28th January 1871, praying that a decree in No. 16 of 1867 may be set aside, as regards the one-third share of the late Mr. F. Guidamore in a cotton screw at Guntúr, and to cancel the attachment and the sale in that suit to the 2nd defendant, and for possession of the same one-third share.

The plaintiff purchased at a sale by the District Munsif's Court of Guntúr, held on the 22nd of December 1868, the interest of Mr. Guidamore in the screw at Guntur. [What is called in the case "the screw" is in fact certain land, with buildings on it, and in which heavy cotton machinery is placed, for screwing cotton bales. No question has been raised, whether the "screw" is not of the nature of real property. It has been so treated by the parties.]

Before the sale to the plaintiff, that is on the 31st of July 1867, the husband of the 1st defendant in this suit filed a plaint, No. 16 of 1867, in the Civil Court of Guntúr against Charles Guidamore, the brother of F. Guidamore (who was then dead), and the Administrator-General who had obtained administration to him—praying to be declared entitled to be treated as mortgagee of F. Guidamore's share in that screw and another at Masulipatam for Rupees 1,696-9-0, and that the amount might be raised by sale of that share.

Issues were settled, the 4th of which was:—"Was there a tangible mortgage of real property or shares in real property?" That suit was duly prosecuted and a decree was made therein on the 30th of September 1869, finding the 4th issue in the affirmative, and declaring that the amount sued for should be paid from the two shares of the said screws (including the Guntúr screw) hypothecated to the plaintiff in

that suit. After that decree, and at an auction sale in execution thereof, the one-third share (in question) in the Guntúr screw was, on the 18th of February 1870, purchased by the 2nd defendant for 610 Rupees. Before the sale, plaintiff in this suit objected thereto by Petition No. 179 of 1870, and, by an order of the 17th of February 1870, he was referred to a regular suit. Accordingly this suit was brought.

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In this suit the 1st defendant, the representative of plaintiff in Suit No. 16 of 1867, filed a statement on the 21st of August 1871, stating the agreement for mortgage by F. Guidamore, and the Suit No. 16 of 1867 and decree and sale therein, and that plaintiff in this suit had notice at the date of his purchase of the existence of the Suit No. 16 of 1867 and of the claim of mortgage affecting the screw.

The plaintiff denied the fact of the mortgage and its regularity and issues were framed, the first of which was—“Whether plaintiff knew that the Suit No. 16 of 1867 was under hearing when he bought the one-third share, and that there might be declared a hypothecation to the late husband of the 1st defendant in this suit.”

The Court below appears to have treated the claim of the plaintiff in No. 16 of 1867 as a mortgage, independent of the decree in that suit, and held that, as it was prior in point of time to the sale under the Munsif's decree it should prevail against plaintiff's claim—even though plaintiff had not notice of such prior mortgage. In that view the Court referred to the case *Regular Appeal No. 40 of 1869(a)* deciding that an instrument of mortgage, giving a right of having the land made available for payment of the debt, being prior in point of time to a *boná fide* purchase for value without notice, prevailed against the innocent purchaser.

The Court also found on the issues that the plaintiff in this suit had notice. Plaintiff has appealed on three grounds; 1st. The plaintiff's rights are not affected by the decree in Original Suit No. 16 of 1867 on the file of the Civil Court of Guntúr, to which he was no party.

2nd. There ought to have been an investigation in this suit as to the mortgage or lien (on the property in dispute) alleged by the defendants and denied by the plaintiff.

(a) 2, M. H. C. R., 434.

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3rd. The purchase of the property in dispute by the 2nd defendant, in execution of the decree in the said Original Suit No. 16 of 1867, is invalid against the prior purchase by the plaintiff in execution of a prior decree.

The record of the Suit No. 16 of 1867 was called for and produced on the hearing before us.

The argument for the appellant was that at the time of the sale under the Munsif's decree, there was not, either in fact or in law, any mortgage affecting the one-third share of Guidamore in the screw, and that the sale under that decree, being prior to the decree in No. 16 of 1867, should prevail, and that plaintiff was entitled to possession as prayed, even though he should not be entitled to set aside the latter decree and sale thereunder. It was contended that as, admittedly, there was not any instrument of mortgage of the one-third of the screw, and inasmuch as the Suit No. 16 of 1867 merely alleged an agreement for a mortgage, that the sale by the Munsif was valid at the time, and could not be affected by the subsequent decree, which found that there was a mortgage and directed a sale, nor could the plaintiff as he was no party to it. Plaintiff contended that the decree merely gave effect as from its date to an agreement for a mortgage, but did not and could not declare that there was a mortgage when that suit was instituted, and that, assuming plaintiff had notice of that suit before he purchased, that such notice was not notice of any charge to be made effectual by a decree, and the case of "*Seth Sam*," 6, M. H. C. R., 75, was relied on to support that contention. Plaintiff further contended that there should be an investigation in this suit whether there was a mortgage by Guidamore of his share of the screw. The plaintiff further insisted that the evidence of notice to him of the Suit No. 16 of 1867 was not sufficient to support the finding of notice in fact.

The defendants, while contending that the judgment below was right upon the ground stated by the Judge in his judgment, further contended that the purchase made by the plaintiff was made while the Suit No. 16 of 1867 was pending, in which a mortgage was alleged and payment was prayed out of the property; and that whether he had or had not

notice of that suit, he was bound by the decree made therein. We are of opinion that in this latter contention the defendants are clearly right. The doctrine of "lis pendens" no doubt applies to this country. See *R. A. No. 28 of 1870*, 6, M. H. C. R. 75; *R. A. No. 1 of 1871*, 6, M. H. C. R., 234. In reference to this doctrine Sir W. Grant in *Winchester v. Paine*, 11, Ves., 194, observes, "He who purchases during the pendency of the suit is bound by the decree that may be made against the person from whom he derives title. The litigating parties are exempted from the necessity of taking any notice of a title so acquired. It is to them as if no such title existed."

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No doubt there must be a specific claim made in the suit, to affect the particular subject sought to be affected by the "lis pendens." *Jennings v. Bond*, 2, J. & L., 741, and cases there referred to by Sir E. Sugden (Lord St. Leonards afterwards); *Tylor v. Thomas*, 25, Beav., 47. The observation of Sir W. Grant was directed to such a state of facts.

Now, in this case, the plaintiff in No. 16 of 1867 claimed to have a mortgage on the one-third share of the screw, and prayed for payment of the amount out of that property, and, pending the decision, the plaintiff in this case purchased under a decree by the Munsif against the defendant in that suit. The purchaser under that decree took only what the defendant could give, and subject to any decree to be made in No. 16 of 1867 against the defendants therein and the land sought to be charged in respect of the alleged mortgage of one-third of the screw.

The fact, if it was so, that the plaintiff had not notice of the suit, is not material in this country, as there is not as yet any registration here of "lis pendens," and the law, as it stood in England before the 2 & 3 Vict. c. 11, applies. The doctrine of "lis pendens" does not depend upon notice, but upon the ground "that it is necessary to the administration of justice that the decision of the Court in a suit should be binding, not only on the litigant parties, but on those who derive title from them 'pendente lite,' whether there is notice or not." *Bellamy v. Sabine*, 1, DeG. & J., 578; *Seth Sam's Case*, supra.

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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.

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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.