

**Ramapa Vs. Umanna**

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**SooperKanoon Citation :** [sooperkanoon.com/328648](http://sooperkanoon.com/328648)

**Court :** Mumbai

**Decided On :** Dec-11-1882

**Reported in :** (1883)ILR7Bom123

**Judge :** Charles Sargent, Kt., C.J. and ;Kemball, J.

**Appellant :** Ramapa

**Respondent :** Umanna

**Judgement :**

Charles Sargent, Kt., C.J.

1. The, plaintiff seeks to recover possession of the half of two survey Nos. 796 and 787 in Honvad village in the Bijapur Taluka and for Rs. 200 mesne profits. It is not disputed that the land, No. 796, was mortgaged in 1874 with possession to the plaintiff and defendant jointly to secure Rs. 500, with an agreement that if the mortgage was not paid off in five years the survey Nos. 796 and 787 should be entered in the khata of plaintiff and defendant jointly.

2. Defendant's case is that plaintiff was paid Rs. 250 by the mortgagor as his share of the mortgage money before the expiration of the five years, and that, on payment of Rs. 900 by him to mortgagor, the lands were entered in his name, the mortgager giving up all interest in the land. A receipt by plaintiff for Rs. 250 on account of the mortgage debt was tendered in evidence by defendant, and objected to on the ground of its not being registered. The Assistant Judge admitted

it on the authority of *Shidlingapa v. Chenbasapa* I.L.R. 4 Bom. 235 but we think wrongly. In that case the question was between mortgagee and mortgagors, and the receipts were given in evidence by the latter merely to show the state of the mortgage account. Here the receipt is tendered by the defendant to show that the interest of his co-mortgagee, the plaintiff, in the mortgage had been extinguished, and the case is, therefore, similar to *Muhadaji v. Vyankaji* I.L.R. 1 Bom. 197 and *Basawa v. Kalkapo* I.L.R. 2 Bom. 489. We agree, however, with the Assistant Judge that the oral evidence corroborated by the probabilities of the case is sufficient to establish the defendant's contention that Rs. 250 were paid to the plaintiff. The decree must, therefore, be confirmed with costs.

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