

(1879) 08 AHC CK 0005

Allahabad High Court

Case No: None

Bansi and Another

APPELLANT

Vs

Ganga Ram, Guardian
of Kuar Gir Prasad

RESPONDENT

Date of Decision: Aug. 5, 1879

Citation: (1880) ILR (All) 431

Hon'ble Judges: Robert Stuart, C.J; Spankie, J

Bench: Division Bench

Judgement

Robert Stuart, C.J.

The Munsif was clearly right in holding that the registered sale-deed, although subsequent in date, had preference over the unregistered bond, and the Subordinate Judge was clearly wrong in deciding to the contrary. In stating this conclusion it is at the same time difficult to resist a certain feeling of its injustice, for it seems unreasonable to allow a discretion, and at the same time to impose a penalty or disability on its exercise. That is plainly what has been brought about. The last Registration Act, III of 1877, not less than its predecessors, allows a discretion as to the registering or not registering certain documents of which the bond in this case is one, and if such an instrument has been legally and validly prepared and executed, and is effectual for its purpose, it might be justly contended it should be so as from its date. Yet one can appreciate the policy, and, in a real sense, the convenience, of compelling, as far as may be, the registration of the contracts of the people of this country. The Subordinate Judge's remark that "agreeably to the principle of the law no law can have retrospective effect," is generally correct, and a right once conferred by law cannot be taken away by implication, and if we had nothing but Section 50 itself, we might possibly have applied these principles of law to the present case, and have held that the sale-deed of 1877, although registered, had no priority over the mortgage of 1875. But the "explanation" appended to Section 50 removes all doubt, and may be said to have a repealing effect by expressly negating the application of the principles of law referred to. On the

other hand, Act III of 1877 does not affect, in the sense of invalidating, the class of instruments mentioned in Section 18. It simply says that such instruments, if registered, shall have preference over any other unregistered document relating to the same property, and such a law it was quite competent to the Legislature to pass. The meaning, however, of Section 50 of Act III of 1877, together with the explanation appended to it respecting the three preceding Registration Acts, is too clear, and as that section provides the law to be applied to the present case, we cannot do otherwise than hold that the sale-deed of the 27th September 1877 has preference over the previous mortgage-bond of the 20th August 1875. We must, therefore, reverse the judgment of the Subordinate Judge on this point, and, with this decision, send back the case to him for disposal on the merits. Costs to abide the result.

Spankie, J.

2. The ruling of the Subordinate Judge appears to be wrong. Under the provisions of Section 50, Act III of 1877, the defendant's instrument, which is registered, would take effect as against the plaintiffs", which might have been, but was not, registered under Act VIII of 1871. The defendant's instrument was executed after Act III of 1877 came into operation. The plaintiffs' deed was executed after the 1st day of July 1871, and was not registered under Act VIII of 1871. It is therefore "unregistered" within the meaning of the explanation appended to Section 50 of the new Act III of 1877. The appeal on the part of the defendant was not decided by the lower Appellate Court on the merits. I feel, therefore, the necessity of reversing the decision of the Subordinate Judge on the point of law and would remand the case to him for trial on the points "regarding which the parties are at issue. Costs to abide the result of a new trial.