
(1913) ILR (All) 353
Allahabad High Court
Case No: None

Liladhar and Others

APPELLANT

Vs

Bakhshi Ram

RESPONDENT

Date of Decision: March 17, 1913

Citation: (1913) ILR (All) 353

Hon'ble Judges: Harry Griffin, J; Chamier, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Harry Griffin and Chamier, JJ.

This was a suit by the respondents on three mortgages, dated the 18th of August, 1878, the 15th of March, 1890, and 13th of November, 1898, but for the purposes of the present appeal we may regard it as a suit on the mortgage of the 15th of March, 1890, only. The first defendant to the suit was Kallu, the executant of the mortgage. Defendants 2, 3 and 4 were the sons of Kallu. Defendant 5 was a lessee of the mortgaged property, and defendant 6, who is the appellant here, is a purchaser of the property in execution of a money decree obtained by him against the defendant Kallu. The appellant put the respondents to proof of the mortgage and of the passing of the consideration and he also pleaded that the mortgage had been made without necessity. The first court held that the execution of the mortgage was proved by the evidence of two witnesses Raghunath Prasad and Bhudeo, but that the passing of a portion of the consideration had not been proved. That court accordingly gave the respondent a decree for part only of the sum secured by the mortgage. On appeal the District Judge agreed with the court of first instance that the execution of the mortgage had been proved and held that it was not open to the present appellant to challenge the deed on the ground that it was not supported by necessity. On the evidence he came to the conclusion that the passing of the whole of the consideration for the deed had been proved and he varied the decree of the first court accordingly. In second appeal it is contended: (1) that the District Judge was wrong in holding that an admission as to the receipt of the consideration made by the

executant Kallu in the deed and again before the registering officer was admissible in evidence against the appellant, the auction-purchaser of the property, (2) that the appellant was entitled to raise the question of legal necessity, and (3) that the evidence relied on as proof of the execution of the deed did not as a matter of law amount to proof of the execution of the deed.

2. The question whether admissions such as those made by Kallu in the present case are admissible against a subsequent auction-purchaser of the property was left open by our decision in *Bihari Lal v. Makhdum Bakhsh* ILR (1913) All 194. All that was held in that case was that such admissions are admissible against a subsequent purchaser of the property by a private treaty. But on the authorities we must hold that there is no real ground for distinguishing between the case of an auction-purchaser and the case of a purchaser by private treaty. The decision of this Court in *Manohar Singh v. Sumitra Kuar* I.L.R (1895) . All 428 has been relied on as authority for the proposition that such admissions are not admissible against a subsequent auction-purchaser of the property. The decision in that case was pronounced shortly before the decision of their Lordships of the Privy Council, in *Mahomed Mozuffer Hossein v. Kishori Mohun Roy* ILR (1895) Cal. 909 was received in this country. In that case their Lordships said that "where one man allows another to hold himself out as the owner of an estate and a third person purchases it for value from the apparent owner in the belief that he is the real owner, the man who so allows the other to hold himself out shall not be permitted to recover upon his secret title unless he can overthrow that of the purchaser by showing either that he had direct notice or at least constructive notice of the real title" and their Lordships decided that this rule applied to a subsequent auction-purchaser of the property. Their Lordships said: "This principle applies to Abdul Ali, and the appellants are in the same position, as they purchased only his right, title and interest and are equally bound by it." If such an estoppel is binding upon a subsequent auction-purchaser, there can be no doubt that an admission made with reference to property is admissible in evidence against a subsequent auction-purchaser of the property. The value of the admission is another matter. The appellant in the present case must be held to be the representative in interest of Kallu and the statements made by Kallu in the deed and before the registering officer are therefore admissible against him. If there is no ground for distinguishing between the case of an auction-purchaser and the case of a purchaser by private treaty, there can be no doubt of the admissibility in evidence of the statements made by Kallu. On this point there are several recent decisions of this Court. The first ground of appeal, there fore, fails.

3. With regard to the second ground of appeal, the appellant must be regarded as a purchaser of the rights of Kallu only. His purchase was made as recently as 1909 and might yet be challenged by Kallu's son. He is, therefore, in a different position from that occupied by the purchaser in the case of *Muhammad Muzamil-ullah Khan v. Mithu Lal* ILR (1911) All. 783. In that case it was held by the majority of the Court that the purchaser was entitled to challenge a mortgage made by one member of, a Hindu family because

he had acquired title to the property, by adverse possession against all the members. We must, therefore, hold that the appellant is not entitled to raise the question of the validity of the mortgage. With regard to the third ground of appeal we think there ought to be a further inquiry by the lower appellate Court. It appears that there were three supposed attesting witnesses to the mortgage. One named Raghunath Prasad, who was called, said that Kallu did not sign the deed in his presence, therefore, he was not an attesting witness. There is evidence that another supposed attesting witness named Sundar Lal is dead. Nothing is known about the third attesting witness. The respondent in all probability relied on a decision of this Court according to which the evidence of Raghunath Prasad, if believed, was sufficient evidence of the execution. In view of a recent decision of the Privy Council it must be held on the record as it stands that the bond in suit has not been proved. In the circumstances we think that the respondent should be given a further opportunity of producing evidence. We direct that the record be returned to the court below for a fresh finding on the question whether the mortgage deed of the 15th of March, 1890, has been proved. Further evidence will be taken and on return of the finding ten days will be allowed for objections.