
(1878) 01 AHC CK 0011

Allahabad High Court

Case No: None

Makundi Lal

APPELLANT

Vs

Kaunsila

RESPONDENT

Date of Decision: Jan. 24, 1878

Citation: (1875) ILR (All) 568

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

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Robert Stuart, C.J.

I adhere to my first judgment, having heard nothing from the bar when the case came before the Full Bench, or from the other members of the Court, to induce me to change my opinion in any respect.

Pearson, Turner, Spankie and Oldfield, JJ.

(After stating the facts as sot out, the judgment continued): The purchaser has appealed to the Full Court, and it is contended on his behalf that there is no evidence of any fraud on his part nor of any such laches as disentitle him to recover, and that as a bona fide purchaser ho is entitled to the return of his purchase-money now that the sale of the minor"s share has in effect been sot aside. Firstly, then, as to the question of fraud, if is to be noticed that no allegation was made in the written statement filed by the decree-holder imputing fraud to the purchaser. It was indeed stated that he was acquainted with the circumstances set out in the proceeding ordering the sale; that he know he was purchasing the property of a minor brought to sale for the satisfaction of a debt stated to have been contracted on the minor"s behalf; hut it was not alleged that he was aware the debt had not been so contracted, nor that he was aware the order for sale was not warranted by the terms of the decree. The Munsif having dismissed the suit without trial, the only evidence as to the present appellant"s knowledge of the circumstances of the sale is that which is to be derived from the examination of the present appellant in the

High Court. That evidence is insufficient to justify the inference that he was in any way a party to or had cognizance of the fraud of the decree-holder.

2. It is, however, argued that the purchaser ought not to recover his purchase-money because he was aware he was purchasing the property of a minor, and therefore incurring risk, and that in the next place he did not take the pains to see that the order was warranted by the decree. To hold that the purchaser, if the sale of a minor's property is set aside, is not entitled to recover back the consideration from a third party who has brought about the sale and obtained the consideration, would very greatly depreciate the selling value of the property of minors, and no authority has been cited to support the contention. It is not apparent why in purchasing the property of minors the purchaser should be deprived of an equity which cannot injure the minor, and to which a purchaser would be entitled if the property purchased had belonged to a person of full age.

3. If the doctrine of caveat emptor applies where the sale has been practically set aside, then it may be proper to hold that the omission to see that the order of sale was warranted by the decree amounted to such a want of reasonable care as to deprive the purchaser of his right to relief. But should not the question of what amounts to reasonable care be considered in reference to the circumstances of the place? In England purchases of real estates are rarely made without the intervention of a solicitor and a scrutiny of title. In these provinces such precautions are almost entirely unknown. However this may be, it would be going too far to hold that the mere omission to see that the order for sale was warranted by the decree; ought to deprive the purchaser of relief under the circumstances at present known to the Court, if on other grounds he is entitled to it. Assuming then that the purchaser was innocent of fraud and purchased in the bona fide belief that the minor's property was properly saleable, there seems no reason why he should not recover back his purchase-money from the decree-holder through whose misfeasance the order for sale was obtained. This case is clearly distinguishable from Kelly's case HCR NWP 1874 168 which have been cited at the hearing. Here the sale has been virtually set aside so far as regards the rights and interests of the minor, the owner of the share. In Kelly's case the sale was not set aside. Kelly, knowing that his wife had already purchased the judgment-debtor's interests in the property offered for sale, purchased what was offered for sale, that is to say, whatever right, title, or interest remained to the judgment-debtor in the property. On similar grounds it has been held in other cases that a purchaser at auction in execution of decree is not entitled to recover back his purchase-money or compensation, although it may be subsequently discovered that the judgment-debtor has a less interest in the property offered for sale than was suggested by the advertisement or even no interest at all. But in these cases also the sale has not been set aside.*

4. But while the present appellant is entitled to recover from the decree-holder his purchase-money and reasonable interest, it cannot be held that he can recover the

costs of a suit which he should not have defended. On receiving information of the minor's claim he might have investigated it, and by surrendering the property have escaped the costs of suit. Had lie wished to protect himself from those costs he might have informed the decree-holder that lie declined to defend the suit unless he obtained a guarantee for the costs. In the absence of such a guarantee he cannot recover anything on this account as against the decree-bolder. The decree of the Division Bench, so far as it dismisses the claim to the purchase-money and interest, is reversed, and the order of the judge affirmed with proportionate costs.

5. Tikaitin did not appear in the Court of First Instance nor in the Judge's Court, nor did she appeal the Judge's order to the Court, but in carrying out the order the Munsif should see that some cause of action is established against this defendant; at present no cause of action is disclosed.

-----Foot Note-----

* See Muhammad Basirulla v. Shaikh Abdulla 4 BLR App 35 Sowdamini Chaudrain v. Krishna Kishore Poddar 4 BLR FB 11 SC :12 AnWR 8; Rajiblochun v. Bimalamoni Dasi2 BLR AC 85; and 6 ACJ 258.