
(1880) 04 AHC CK 0020

Allahabad High Court

Case No: None

Lachman Das

APPELLANT

Vs

Dip Chand

RESPONDENT

Date of Decision: April 22, 1880

Citation: (1880) ILR (All) 851

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

Bench: Full Bench

Judgement

Robert Stuart, C.J.

There cannot be the least doubt or difficulty as to the meaning and application of Section 50, Act III of 1877, to such a case as the present. I have held that opinion ever since that Act came into operation, and I lately gave effect to it in a judgment on a Division Bench, not then anticipating the present reference. As to Section 5 of the General Clauses Act, it is idle to contend that it has any bearing whatever in such a case as this.

Pearson, J.

2. Section 50, Act III of 1877, declares that registered documents relating to land of which registration is optional shall take effect against unregistered documents; and the word "unregistered" is defined in the explanation thereunder to mean, in cases where the document is executed after the first day of July 1871, not registered under Act VIII of 1871 or the Act of 1877. That definition appears to me to preclude and negative the view that an unregistered document of 1876 could be protected by Section 6, Act I of 1868, from being affected by Section 50, Act III of 1877. Whether such a view could be maintained was stated to be the point for consideration.

Spankie, J.

3. In reply I would say that the provisions of Section 50, Act III of 1877, do apply to this case. I do not think that Section 6 of the General Clauses Act would apply to a

case of this nature.

Oldfield, J.

4. The registration of the plaintiff's deeds is optional, and by Section 50 of Act VIII of 1871, which was in force at the time they were executed, they would take effect in preference to such a deed as that of the defendant though registered, since the registration of the latter is compulsory.

5. By the terms of Section 50, Act III of 1877, however, every registered document, whether its registration be compulsory or optional, shall take effect against every unregistered document relating to the same property, and hence the defendant's document executed since the Act came into force will now take effect in preference to the plaintiff's. The effect upon the plaintiff's is of course that a document, which was perfectly valid and effective at the time it was executed against any such registered document as that of defendant which might subsequently be executed, has now become ineffectual against such a document.

6. I was at first inclined to consider that the Legislature could not have intended such a result, particularly as no provision is made for enabling parties to register within a reasonable time those unregistered documents affected for the first time by the provisions of the new Act; and I was inclined to think that the right of persons circumstanced like the plaintiff might be saved by the provisions of Section 6, General Clauses Act, whereby the repeal of any Statute, Act, or Regulation shall not affect anything done before the repealing Act shall have come into operation. But a careful-examination of Section 50 and the explanation annexed to it has satisfied me that the application of Section 6 of the General Clauses Act will not save plaintiff's documents from being affected by the provisions of Section 50, for Act III of 1877, does more than merely repeal Act VIII of 1871. It contains in Section 50 an express provision by which all unregistered documents executed at the time the former laws referred to in the section were in force are to be defeated by all registered documents of the nature of those mentioned in the section. I would, therefore, answer the reference in the affirmative.

Straight, J.

7. It appears to me that Section 50 of the Registration Act of 1877 is conclusive, and that the defendant's registered deed takes precedence of the plaintiff's unregistered bonds.