

Umesh Chandra Haldar Vs Umesh Chandra Bag and Others

Court: Calcutta High Court

Date of Decision: Dec. 12, 1912

Citation: 18 Ind. Cas. 46

Hon'ble Judges: Holm wood, J; Chapman, J

Bench: Division Bench

Judgement

1. This appeal arises out of a suit brought by the plaintiff for redemption of a usufructuary mortgage, dated the 20th Ashar 1266, by one Nobin

Bag, the predecessor of defendants Nos. 5 and 6 in favour of defendant No. 1 for Rs. 75. The plaintiff is the purchaser of the same land from the

heirs of Nobin Bag and his purchase was a registered purchase, dated 14th Ashar 1316, corresponding to 20th June 1909, for Rs. 600, keeping

Rs. 75 in hand for payment of the mortgage. The defence was that on the 7 th Chaitra 1283 corresponding to the 19th March 1877, Nobin Bag

had sold the equity of redemption to defendant No. 1 for Rs. 130 and, therefore, there was nothing to redeem.

2. The first Court held that the alleged sale to defendant No. 1 was not proved. The lower Appellate Court held that the sale is genuine though it

was made by an unregistered document and that being before the Transfer of Property Act was enacted, it would not be compulsorily registrable.

He also disagrees with the Munsif who held that the redemption by defendant No. 1 was purely gratuitous and the act of a stranger, and he,

therefore, obviously held that the defendant had the right to subrogate. He did not go into the question of notice. But on the view we take of the

case, it will not be necessary to remand the case for inquiry upon this point as the facts which govern the law are admitted.

3. The first point taken in appeal by the plaintiff was that the deed was compulsorily registrable because the defendant admits that he paid Rs. 130.

Had the Transfer of Property Act been in force at the time, there can be no doubt that it would have been compulsorily registrable because no

transfer of property worth over Rs. 100 could be made except by a registered document. But the Registration Act of 1871, by which this case is

governed, merely enacts that a document which purports to convey property of the value of over Rs. 103 must be registered and the parties in this

case set out the value of the property in the document as Rs. 99. The document, therefore, on the face of it was not compulsorily registrable and

there is, therefore, nothing in the first point.

4. The second point was that the registered deed has priority over the unregistered deed; The leading case of Shivram v. Sata 13 B. 229 and

many other authorities having decided that point. As regards this point, it appears to depend on the question of notice Registration in itself is not

notice and mere possession is not notice, and the Full Bench, in the case of Narain Chunder Chuckerbutty v. Dataram Roy 8 C. 597: 10 C.L.R.

241 held that this question of notice was necessary when the first purchaser had obtained possession under an unregistered conveyance, even if

such possession continued at the date of the second registered conveyance, and they remanded the case to the lower Court for decision on the

issue, if the appellant was a bona fide purchaser for value, was he affected by notice of the plaintiff's title? In a subsequent case, Nani Bibee v.

Hufizullah 10 C. 1073 Garth, C.J., and Beverley, J., held that, although the mere fact of possession having been taken by a purchaser under an

unregistered conveyance is insufficient of itself to establish a good title to a property as against a subsequent registered purchaser and is not

conclusive evidence of notice as against him, yet in the majority of cases such possession is very cogent evidence of notice. Now that, on the

admitted facts of this case, possession is notice is perfectly clear from the judgment of the Bombay Court in Konaiba v. Nana Shidrao 27 B. 408;

5 Bom. L.R. 269 where the learned Judges cited English authorities from 1794 down to 19(sic)2 and we may mention the first of these authorities

Taylor v. Stibbert 2 Ves. Jr. 437 : 2 R.R. 278 and the latest authority Hunt v. Luck (1902) 1 Ch. 428 p 433; 71 L.J. Ch. 239 : 50 W.R. 291 : 86

L.T. 68 : 18 T.L.R. 265 where three of the Lords Justices laid down as follows: ""if a purchaser or a mortgagee has notice that the vendor or

mortgagor is not in possession of the property, he must make inquiries of the person in possession (of the tenant who is in possession) and find out

from him what his rights are, and if he does not choose to do that, then whatever title he acquires as purchaser or mortgagee will be subject to the

title or right of the tenant in possession;"" And the Bombay Court says: ""It follows, then, both on principle and authority, that the plaintiff having had

notice of the defendant's actual possession at the date of the plaintiff's purchase, was bound to inquire of him as to the nature of his possession,

instead of assuming that because that possession had originally commenced under a tenancy, it must have continued under that title on the day

when the plaintiff purchased the land;"" and it so happens that the facts of that case are precisely similar to the facts of the case before us. That was

also a case where the first purchaser under an unregistered deed had been in possession of the land before as a tenant. This case is rather stronger

because it was known to the plaintiff that the first purchaser had been in possession of this land as a usufructuary mortgage, and his case is that he

has continued for 50 years to be such usufructuary mortgagee and he claims to redeem him on that footing. Now, knowing that defendant No. 1

was in possession as usufructuary mortgagee, the English authorities, which are cited and followed in the case of *Kondiba v. Nana Shidrao* 27 B.

408 : 5 Bom. L.R. 269 we have just noticed, make it clear that this was itself sufficient to put him on notice of the defendant's possession, and to

make it incumbent upon him to inquire as to the nature of his possession, instead of assuming that the usufructuary mortgage continued. Under

those circumstances, on all the authorities, the subsequent registered sale of the property to the plaintiff can give him no priority over the

unregistered purchase made by the defendant No. 1 so long ago as 1877.

5. As regards the third point which raised the question of subrogation after a considerable amount of argument, the Court having expressed its

inclination to follow the dictum of Mr. Justice Mookerjee in *Bisheswar Prosad v. Lala Sarnam Singh* 6 C.L.J. 134 the point as regards the right of

subrogation was waived so that we need not decide that question.

6. The result is that the appeal fails on all the grounds upon which it was brought and must be dismissed with costs.