
(1881) 03 CAL CK 0001

Calcutta High Court

Case No: None

Nusir Mistri

APPELLANT

Vs

Najibulla Mulla

RESPONDENT

Date of Decision: March 30, 1881

Acts Referred:

- Registration Act, 1877 - Section 21

Citation: (1881) ILR (Cal) 196

Hon'ble Judges: Pontifex, J; Field, J

Bench: Division Bench

Judgement

Pontifex, J.

Who, after stating the facts of the case as above, continued:---Before the District Judge two authorities were cited; one of them---Does Money Dosee v. Jonmenjoy Mullick (I. L. R. Gal. 363)---is an authority to-show that general words like those used in this bond would be insufficient to-give a creditor a lien upon any specific property. The other is a Full Bench case, Rajkumar Ramgopal Narayan Sing v. Ram Dutt Chowdhry (5 B. L. R. 264), and is relied upon by the plaintiff to show that, in this particular case, there was sufficient mention of property in the bond to give him a lien. Now the construction that ought to be put upon documents of this nature is stated, very plainly in Sugden on "Vendors and Purchasers," page 711, 14th edition. It is there laid down that it is a general rule, although it may not hold universally true, that "a covenant to convey and settle lands will not be a specific lien on the lands of the covenantor, but the covenantee will be a creditor by specialty." That accords with the decision in Doss Money Dossee V. Jonmenjoy Mullick (I. L. R. 3 Cal. 363), to which I have referred, and it also-accords with common sense and reason.

2. Even without these authorities, we should be of opinion that the words used in this bond are too vague and uncertain to pass any lien. In fact, no specific property whatever is mentioned by situation. In the case of Rajkumar Ramgopal Narayan Sing v. Rain Dutt Chowdhry (5 B. L. R. 264), referred to, property situate in certain specific

mouzas is mentioned, and therefore that case is distinguishable from the case now before us.

3. On the ground, therefore, that the words of this bond are too vague and general to give any specific lien, we think that the decisions of the Courts below should be reversed; and in addition to the authorities above referred to, we find it laid down in Macpherson's book on Mortgages, page 64, that "the property intended to be mortgaged should be described, so that it may be readily recognized and identified, and so as to meet the requirements of the Registration Act."

4. Now we find from Section 21 of the Registration Act, that "no non-testamentary document relating to Immovable property shall be accepted for registration, unless it contains a description of such property sufficient to identify the same." We also find that this particular bond was recorded under the Registration Act in the book numbered "four" required to be kept by the Act; but by the provisions of the Registration Act, all documents which relate to Immovable property, and which are not wills, are to be recorded in book "one," while in book "four" are to be entered documents which do not relate to Immovable property. We think, therefore, that this bond having been entered in book "four," shows pretty plainly what the intention of the parties themselves was, when this instrument was registered. If they had supposed that it gave a lien upon specific Immovable property, it would have been their duty to have it recorded in book "one," and unless it was recorded in book one," there would be no protection for a purchaser buying from a bond-debtor, for no search of the indexes required to be kept by the Act would give him notice that land belonging to the bond-debtor had been hypothecated. Putting it at the highest, the parties before us stand in precisely the same position. Even if the plaintiff intended to obtain a lien on his debtor's land, he would only be in the same position as the defendant, viz., a purchaser for valuable consideration. But the defendant, being in this position, has-taken the precaution to register his conveyance as a conveyance of Immovable property, whereas the plaintiff has only taken under a bond in these vague and uncertain words, and has failed to register it properly as a document relating to Immovable property.

5. We think that the decision of the Courts below must be reversed, and this appeal decreed with costs.