

**(1886) 03 CAL CK 0004****Calcutta High Court****Case No:** None

Abool Hossein

APPELLANT

Vs

Raghu Nath Sahu

RESPONDENT

**Date of Decision:** March 30, 1886**Citation:** (1886) ILR (Cal) 70**Hon'ble Judges:** Pigot, J; O'Kinealy, J**Bench:** Division Bench**Judgement**

Pigot, J.

The question in this case which arose before both the lower Courts was, whether, when there is an unregistered mortgage, the registration of which is not compulsory, a purchaser of the property who has registered his deed of sale, but who has bought with notice of the unregistered mortgage, purchases subject to the mortgage: the Courts below held that such notice is immaterial, taking that view in consequence of what they understood to be the effect of the judgment of Mr. Justice Field in Bamasundari Dassi v. Krishna Chundra Dhur ILR Cal. 424. In that case Mr. Field expressed the opinion that the effect of the decisions in the cases of Fuzladdeen Khan v. Fakir Mahomed Khan ILR Cal. 336 and of Narain Chunder Chuckerbutty v. Dataram Roy ILR Cal. 597 was not, in his opinion, to decide the point, the observations in those decisions being no more than obiter dicta; and the case of Denonath Ghose v. Aluck Moni Dabi ILR Cal. 753 not having been decided by both members of the Court on the ground of notice.

2. Now, it is to be observed that Mr. Justice Field, in Bamasundari Dassi's case ILR Cal. 424 says, at the bottom of page 427 \* \* \* : "We think that in the present case the question does not really arise." The learned Judge's decision, therefore, does not amount, in our opinion, to a decision upon the effect of the judgments in the other cases; the learned Judge was careful to point out that there was no proof or reasonable presumption of notice in the case; and that, therefore, the question did not arise--see again at page 428. In the recent case of Bhalu Roy v. Sakhu Roy ILR

Cal. 667 the question was raised and expressly decided, that in such a case as the present, the purchaser with notice takes subject to the mortgage. We think that that principle must be taken to be the principle of this Court, having regard to the cases referred to by Field, J., and further to the case of Nemai Charan Dhabal v. Kokil Bag ILR Cal. 534 where Mr. Justice Mitter followed the case of Waman Ramchandra v. Dhondika Krishnaji ILR 4 Bom. 126. According to these cases a person who purchases with notice of a contract for the sale of property, not requiring registration, and unregistered, purchases subject to the rights of the person with whom the contract has been entered into. We see no difference between the principle in the one case and that in the other; and we may add that the passage from Lord Cairns' judgment in Agra Bank v. Barry L.R. 7 H.L. 135 cited in the Bombay case is one to which attention may well be invited. It lays down the principles applicable to a question of this sort. The decision of Lord Cairns is upon the Irish Act, one very similar in terms to the Indian Registration Act, and identical in principle with it.

3. We must remand this case, therefore, for we cannot find that the learned Subordinate Judge has come to a definite finding, aye or no, whether Mahadeo had notice of the mortgage. We express no opinion ourselves upon the evidence as to this question. We remand the case to the Subordinate Judge for a finding upon that question. The case will be kept on the file, and the record will be sent down with this judgment, and the Subordinate Judge will return his finding within three weeks from the receipt of this order.