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(1913) 03 CAL CK 0028

Calcutta High Court

Case No: Appeal from Appellate Decree No. 3338 of 1910

Magoo Brahma		APPELLANT
	Vs	
Balkrishna Das and others		RESPONDENT

Date of Decision: March 5, 1913

Final Decision: Dismissed

Judgement

1. This is an Appeal by the Plaintiff in a suit for rent. The land in respect of which rent is claimed originally belonged to Sankar Sarangi. The Plaintiff alleges that he acquired title thereto by a registered conveyance executed in his favour by the son of Sankar Sarangi on the 6th June 1903. The Defendants were admittedly at the time tenants in occupation of the land and would prima facie be liable to pay rent. But they contest the claim of the Plaintiff on the allegation that on the 4th July 1889 they obtained a usufructuary mortgage of this land by an unregistered instrument and since then have been in possession as usufructuary mortgagees. On these facts it has been argued on behalf of the Plaintiff-Appellant that he has a preferential title to the land under sec. 50 of the Indian Registration Act, which provides that registered documents relating to land take effect against unregistered documents whether such unregistered documents be of the same nature as the registered documents or not. In answer to this contention it has been argued on behalf of the Defendant that sec. 50 of the Indian Registration Act has no application where the person who claims title under the subsequent (sic) document has notice of the (sic) by the prior unregistered (sic). This proposition is well (sic) supported by the decision (sic) Chandra v. Dataram (sic). Ram Autar v. Dhanauri (sic) and Krishnamma v. Suranna (sic). As observed in Chinnappa v. Manikavasagam (sic), the burden lies upon the person who alleges such knowledge or notice to aver it in his pleadings and to establish it. Consequently the question arises whether the Defendant has proved that when the Plaintiff took his conveyance he had notice of the usufructuary mortgage under which the Defendants claim. On behalf of the Defendants it is con tended that it was incumbent upon the Plaintiff at the time he took his conveyance, to inquire into the question of possession of the property and if he had made such

enquiry from the Defendants he would have found that the latter were in possession not merely as tenants but as usufructuary mortgagees. This raises the question whether it was incumbent upon the Plaintiff to make any enquiry as to the possession of the property. Now it cannot be disputed, as laid down in the case of Allen v. Seckham (sic), that when a person purchases property where a visible state of things exists which could not legally exist unless the property were subject to some burden, he is taken to have notice of the extent and nature of that burden. On this principle it has been ruled that if a person is in possession it is sufficient to put a purchaser on enquiry as to the nature and extent of his interest. The leading decisions in support of this proposition are the judgments of (sic) Couch in the cases of (sic) (sic) and Hakeem Meah v. (sic): see also Barnhart v. Greenshields 9 Moo. P.C. 18 (1853), Jogal Kishore v. Kartik ILR 26 Cal. 116 ((sic)), Bhika Bai v. Udit ILR 25 All. 366 (1903), Kondiba v. Nana ILR 27 Bom. 408 (1903), Radhamadhab v. Kalpataru 17 C.L.J. 209, 214 (1913). In the case before us, the Defendants and not the vendors of the Plaintiff were admittedly in occupation of the land at the time of the execution of the conveyance in his favour: it was consequently incumbent upon him to enquire under what title the Defendants claimed to be in occupation. This he did not do, and in justification of his conduct it has been urged that he was entitled to assume that the Defendants were in occupation as tenants, in other words, to assume that as they had entered into possession of the land as tenants, they had not subsequently acquired any other title. In our opinion, this position cannot possibly be supported : the contention in fact is opposed to the decision in Kondiba v. Nana ILR 27 Bom. 408 (1903), which was followed in Vyankappa v. Yamnasami ILR 35 Bom. 269 (1911); this latter case was accepted as good law in Ram Charan v. Jayram 17 C.W.N. 10 (1912). It is indisputable that if a person purchases and takes a conveyance of an estate which he knows to be in the occupation of a person other than the vendor, he is bound by all the equities which the person in such occupation may have in the land, for possession is prima facie seisin and the purchaser has therefore actual notice of a fact by which the property is affected and he is bound to ascertain the truth. [Holmes v. Powell 8 DeG. M. & G. 572 (1856), Carroll v. Keayes 8 Ir. R. Eq. 97, Rally v. Gamett 7 Ir. R. Eq. 1]. The extreme length to which this doctrine has been carried is illustrated by the decision of Eldon, L.C., in Daniels v. Davison 16 Ves. 249 : 17 Ves. 438 : 10 R.R. 171 (1809), where it was ruled that the purchaser has constructive notice not merely of the title of the tenant in occupation, but also of a contract into which he had entered for the purchase of the estate, [Hanbury v. Litchfield 2 My. and K. 629, 633 (1833), Jones v. Smith 1 Hare 43, 62 (1841)]. The principles applicable to cases of this description were explained in Hunt v. Luck [1902] 1 Ch. 428, where Vaughan Williams, L.J., states the law in these terms : "If a purchaser or mortgagee has notice that the vendor or mortgagor is not in possession of the properly, he must make enquiries 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." This doctrine was applied by this

Court in the cases of Radhamadhab v. Kalpataru 17 C.L.J. 209, 214 (1913) and Bahuram v. Madhab 10 I.C. 9 (1913). Tested in the light of these principles, the claim of the Plaintiff is manifestly unfounded and has been rightly negatived : he must be deemed to have purchased the property with notice of, and consequently subject to, the usufructuary mortgage of the Defendants and is not entitled to claim rent for them as his tenants, till he has redeemed the usufructuary mortgage.

2. The result is that the decree of the District Judge is affirmed and this Appeal dismissed with costs.