

Dundaya Vs. Chenbasapa

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Court : Mumbai

Decided On : Mar-09-1883

Reported in : (1885)ILR9Bom427

Judge : Charles Sargent, C.J. and ;Melvill, J.

Appellant : Dundaya

Respondent : Chenbasapa

Judgement :

Charles Sargent, C.J.

1. Both the parties to this suit claim through three brothers, Ningapa, Dhulapa and Chenbasapa The plaintiff by a registered] deed mortgaged to secure Rs. 250, dated 19th September 1877, and defendant by an unregistered deed of sale for less than Rs. 100, dated the 1st April 1877. Both the Courts below held that the plaintiff's registered deed must prevail, having regard to Section 50, Act III of 1877. Defendant by his written statement pleaded that he had been put into possession at the time of the sale to him, and had since occupied as owner; and it has been argued before us that, assuming that to have been so, the plaintiff would not be entitled to priority.

2. It must be taken, we think, as settled law in this Presidency that a subsequent registered purchaser or mortgagee is not to be preferred against a prior unregistered 'purchase or mortgage of which he had notice-Shiuram v. Genu I.L.R.

6 Bom. 515), and, further, that, possession by, or a registration of the title of a purchaser or mortgagee prior in point of time is notice of that title to subsequent purchasers and mortgagees-Lkshmandas Sarupchand v. Dasrat I.L.R. 6 Bom. 168. The above decisions were under the Act XX, of 1866; but as the language employed in Section 50 of the Acts of 1871 and 1877, by which preference is given to registered documents is the same as that used in Section 50 of Act XX of 1866, the principle established by those decisions is equally applicable to the recent Acts. See also Warnan Ramchandra v. Dhondiba Krishnaji I.L.R. 4 Bom. 128 where the case fell under Act VIII of 1871. Assuming, therefore, that the defendant was in possession when the mortgage deed was executed to plaintiff, or that plaintiff had otherwise notice of defendant's purchase, it is clear that the latter could derive no advantage from the registration of his mortgage.

3. We must, therefore, send back the case for the Judge to record a finding' on the following issue, after taking such evidence as the plaintiff and defendant may wish to give, and having regard to the above remarks :

4. Had the plaintiff notice of the defendant's sale, exhibit 3, when the mortgage (exhibit 32) was executed to him?

5. And send back the finding to this Court.

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