

Shivram Vs. Saya

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Court : Mumbai

Decided On : Apr-24-1888

Reported in : (1889)ILR13Bom229

Judge : Birdwood and; Parsons, JJ.

Appellant : Shivram

Respondent : Saya

Judgement :

Birdwood, J.

1. The plaintiff claims certain land under a registered deed of sale dated the 1st February, 1872. The defendant is the vendee of the same land from one Piraji Nhavi, who purchased from the plaintiff's vendor on the 15th July 1871. Piraji Nhavi did not register his deed of sale, but obtained possession of the land in 1882. The defendant's deed of sale is registered. The contest is between Piraji Nhavi's unregistered deed of 1871 and the plaintiff's registered deed of 1872. If we can hold that Section 50 of Act III of 1877 is applicable to the case, then the plaintiff must succeed, even though Piraji Nhavi took possession of the land. The High Courts of Calcutta, Madras and Allahabad have concurred in giving a retrospective effect to the provisions of that section so far as it refers to registered instruments. See *Shib Chandra Chakravarti v. Johobux* I.L.R. 7 Cal. 570 ; *Kondayya v. Guruvappa* I.L.R. 5 Mad. 139 ; and *Abdul Rahim v. Ziban Bibi* I.L.R. 5

All. 593. But the course of decisions in this Court prevents our adopting such a construction. See *Kanitkar v. Joshi* I.L.R. 5 All. 593 ; *Ichharam Kalidas v. Govindram Bhowanishankar* I.L.R. 5 Bom. 653 ; *Lakshmandas Sarupchand v. Dasrat* I.L.R. 6 Bom. 168 ; *Rupchand Dagdusa v. Davlatrav Vithalrav* I.L.R. 6 Bom. 495 . The 'Explanation' of the section shows that it is applicable to unregistered instruments clouted before the Act came into force; but the decision in *Ichharam Kalidas v. Govindram Bhowanishankar* I.L.R. 5 Bom. 653 shows that, though that is so, the section has no application to cases where the contest is between an unregistered instrument, whenever executed, and a registered instrument executed, as in the present case, before the Act came into force. It applies only to cases where the registered instrument is subsequent to the Act. That being so, we cannot apply Section 50 of Act III of 1877 to the present case. Under Section 50 of Act VIII of 1871, which was in force when the instruments in question were executed, the contest can only be between instruments both of which are optionally registrable. See *Parmaya v. Sonde Shrinivasapa* I.L.R. 4 Bom. 459 ; *Oghra Singh v. Ablakh Kooer* I.L.R. 4 Cal. 536 ; and *Bholanath v. Baldev* I.L.R. 2 All. 198 . Here, however, the deed of sale of 1871 was optionally registrable, whereas the registration of the later deed of 1872 was compulsory. There is, therefore, no competition between them; and the earlier, under which the defendant claims, must prevail.

2. It was argued, however, that as Piraji Nhavi stood by while his vendor sold to the plaintiff, without disclosing his own title, he could not pass any title to the defendant. But there is no allegation and nothing in the case to show that Piraji acted in such a way as to be deprived of his legal rights under his purchase, or that he, in any way, encouraged or influenced the plaintiff's purchase. The plaintiff never acquired possession of the property, nor is there anything to show that Piraji even knew of his purchase. The case is clearly not one to which the rule relief on by the appellant can be applied. See *Willmott v. Barber* 15 Ch. Div. 96. We, therefore, confirm the decision of the lower appellate Court with costs.

Parsons, J.

3. The plaintiff claims certain land under a registered deed of sale dated the 1st February, 1872. The defendant, who is in possession, claims the same land by purchase from Pirdji Nhavi, who bought from the plaintiff's vendor by an unregistered deed of sale dated the 15th July, 1871. The contest is as to the priority of these deeds, the one relied on by the plaintiff compulsorily registrable and registered under Act IX of 1871, the other relied on by the defendant optionally registrable under the same Act and not registered. There is no doubt that if Section 50 of Act III of 1877 does not apply, registration gives no priority to the plaintiff's deed--*Parmaya v. Sonde Shrinivasapa* I.L.R. 4 Bom. 459 In deciding the point, regard must be had to the consistent course of rulings of this Court--*Kantakar v. Joshi* I.L.R. Bom. 442 ; *Icahhram Kalidas v. Govindram Bhowanishankar* I.L.R. 5 Bom. 653 ; *Lakshmandas Sarupchand v. Dasrat* I.L.R. 6 Bom. 168 ; *Rupchand Dagdusa v. Davlatrav Vithalrav* I.L.R. 6 Bom. 495 ; opposed though they be to the decisions of the other High Courts--*Saib Chandra Chakravati v. Johobux* I.L.R. 7 Cal. 570 ; *Kondayya v. Guruvappa* I.L.R. 5 Mad. 139 ; *Abdul Rahim. v. Ziban Bibi* I.L.R. 5 Mad. 139 ; and, therefore, it must be held that Section 50 of Act III of 1877 has no retrospective effect, and that the words 'duly registered, in that section mean duly registered under that Act and not under any prior Act. By virtue, therefore, of its being registered, the plaintiff's deed is entitled to no priority over the defendant's. It was further argued that as the defendant did not on his purchase take possession of the land, he cannot dispute the subsequent alienation made by his vendor whom he allowed to remain on in possession. No rule of law or equity, however, is shown that will support a proposition so broadly stated. If the defendant, knowing of the intended sale to the plaintiff, had stood by and encouraged it or had not forbidden it, or if he even were shown to have in any way misled the plaintiff, he might be held bound by the sale; see *Willmott v. Barber* 15 Ch. Div. 96 ; but, in order that he be bound, it is necessary to show a suffering amounting to fraud--*Hanning v. Ferren* 1 Eq. A. 356 . It cannot be held that by merely omitting to take possession of the land on his purchase the defendant was guilty of any positive fraud or of any concealment or negligence so gross as to amount to fraud, that will entitle the plaintiff to relief against him--*Evans V. Bicknell* 6 V. J. 174. In this case indeed any such relief could hardly be asked for by the plaintiff, because he himself never took

possession,, and was, therefore, even more negligent than the immediate vendor of the defendant, for that vendor was in possession when he sold to the defendant by the registered deed of the 14th October, 1882, by virtue of which deed and of his possession, thereunder the defendant claims to hold the land. The equities, therefore, are on the side of the defendant rather than of the plaintiff. For these reasons I concur in confirming the decree with costs.

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