

Tejpal Vs. Girdhari Lal

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Court : Allahabad

Decided On : Jan-04-1908

Reported in : (1908)ILR30All130

Judge : John Stanley, C.J. and ;William Burkitt, J.

Appellant : Tejpal

Respondent : Girdhari Lal

Judgement :

John Stanley, C.J. and William Burkitt, J.

1. The suit out of which this appeal has arisen was brought by the plaintiff to enforce payment of a sum of Rs. 129-3-0, secured by a mortgage of the 25th of November 1900, by sale, if necessary, of the mortgaged property. The principal amount secured by the mortgage was Rs. 95 and therefore the mortgage was not compulsorily registrable. After the execution of this mortgage, namely, on the 26th of January 1901, the mortgaged property was sold by Bahraich the mortgagor to Bhagwan Singh, Karan Singh and Tota Ram and the purchase deed in their favour was duly registered. At the date of the sale the purchasers had notice of the unregistered mortgage and therefore must be taken to have purchased the property subject to it. Subsequently the defendant respondent Girdhari Lal claimed a right to pre-empt this sale, and succeeded in his claim and obtained possession of the property. The plaintiff then brought his suit, and it was defended by Girdhari

Lal on the ground that at the time of pre-emption he had no notice of the plaintiff's mortgage and therefore was not bound by it. The learned Munsif held that the defendant appellant purchased subject to all the liabilities which attached to the property in the hands of the vendees, and was therefore liable to satisfy the mortgage. On appeal the learned Subordinate Judge reversed this decision, holding that the pre-emptor was not affected by the notice of the mortgage which the vendees had; that he had no knowledge of the mortgage when he pre-empted the sale, and that therefore the property in his hands was not liable for the mortgage debt.

2. From this decision the appeal now before us was preferred. On behalf of the respondent reliance was placed upon Section 50 of the Registration Act, which provides that every document of the kind mentioned in Clauses (a), (b), (c) and (d) of Section 17, which include a deed of sale, shall, if duly registered, take effect as regards the property comprised therein against every unregistered document relating to the same property and not being a decree or order. This section, it has been frequently held, does not protect a purchaser who purchased with knowledge of an unregistered incumbrance. Therefore it is clear that the vendees Bhagwan Singh, Tota Ram and Karan Singh were liable to satisfy Tejpal's mortgage. They in fact must be taken to have purchased the property subject to the mortgage.

3. The question then is, is the pre-emptor Girdhari Lal in any better position than the vendees? We think not, and for this reason: a right of pre-emption is not a right of repurchase, but is simply a right entitling the pre-emptor to be substituted for the vendee as purchaser and to stand in his shoes in respect of all the rights and obligations arising from the sale under which he derived his title. A person who chooses to pre-empt, therefore, must take upon him the burden of the obligations subject to, which the sale was made as well as the benefits accruing therefrom. In other words, he can get no more than that for which the vendee bargained. The vendees in this case acquired the property subject to the plaintiff's mortgage, and the pre-emptor if he chose to pre-empt must also take subject to it. The pre-emptive property was not in fact an unincumbered property, but one subject to the plaintiff's mortgage, an incumbrance which the purchasers were liable to satisfy, and which the pre-emptor, who has enforced his right to have his name substituted

as purchaser, must, we think satisfy. The vendees had distinct notice of the incumbrance, and even if they concealed their knowledge of it from the pre-emptor, they cannot thereby give him a better right than that which they themselves possessed. The question may be looked at from another point of view. The consideration for the sale to the vendees was not alone the money actually paid in cash, but also the amount of the mortgage, for the payment of which they became responsible. In holding, therefore, that the pre-emptor is bound to satisfy the mortgage-debt, we simply require him as pre-emptor to pay the entire of the purchase money. It is well settled law in this Court that a pre-emptor must pre-empt the whole of the bargain between vendor and vendee or not at all. He cannot take a portion of it only. Here part of the bargain was that the vendees should accept the liability of the vendor in respect of the plaintiff's mortgage. Therefore the successful pre-emptor took subject to that liability.

4. For these reasons we think that the lower appellate Court was wrong in reversing the decision of the learned Munsif. We therefore allow the appeal, set aside the decree of the lower appellate Court and restore the decree of the Court of first instance with costs in all Courts. We extend the time for payment of the mortgage debt up to the 1st of April next.