

Dhanpal Singh Vs. Budh Singh and anr.

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Court : Allahabad

Decided On : Feb-27-1913

Reported in : (1913)ILR35All271

Judge : Harry Griffin and ;Chamier, JJ.

Appellant : Dhanpal Singh

Respondent : Budh Singh and anr.

Judgement :

Harry Griffin and Chamier, JJ.

1. The plaintiff the suit sued to recover principal and interest on an unregistered mortgage deed, dated the 15th of December, 1887, to secure an advance of Rs. 95. The mortgage was executed by Budh Singh, defendant No. 1 in favour of the plaintiff's predecessor in title. Defendant No. 2 Sah Tejpal held a registered mortgage, also for Rs. 95, executed on the 5th of December, 1892, hypothecating the same property. Tejpal brought a suit on his mortgage and obtained a decree, in execution of which he purchased the property himself. The present suit was resisted by Tejpal on the ground that he was purchaser in execution of a decree obtained on a document which by reason of registration took effect against the unregistered document held by the plaintiff. The court of first instance gave the plaintiff a decree conditional on his paying half the amount due to Tejpal defendant No. 2, under the mortgage deed in the latter's favour. Tejpal defendant No 2

appealed to the lower appellate court. In his memorandum of appeal various grounds were taken. But the lower appellate court has decided the appeal on one ground only. Tejpal contended that as he was a purchaser at an auction sale held in execution of a decree on a mortgage having priority over the mortgage in favour of the plaintiff the rights of the plaintiff were altogether extinguished. The lower appellate court upheld this contention and without considering the other pleas raised in the appeal decreed the appeal and dismissed the plaintiff's suit in toto. In second appeal it is contended that the view taken by the lower appellate court is wrong. Section 50 of the Registration Act provides that a registered document of the kind mentioned in Clauses (a), (b), (c) and (d) of Section 17 and Clauses (a) and (6) of Section 18 shall, if duly registered, take effect as regards the property comprised therein against an unregistered document relating to the same property. The defendant Tejpal relies on his purchase in execution of a decree obtained by him on a registered mortgage. What he purchased at the auction sale was the right, title and interest of his mortgagor. The mortgage held by the plaintiff, although not created by a registered document, was not invalid merely by reason of the document not being registered. If a valid mortgage was created by that document the debt secured was recoverable from the surplus, if any, left after the satisfaction of the registered mortgage held by Tejpal. As the only point decided by the lower appellate court was that the rights of the plaintiff were altogether extinguished, and as we are unable to agree with that view, we must allow this appeal, set aside the decree of the lower appellate court and remand the case to that court for decision of other questions raised in the appeal before that court.

2. Cost of this appeal will be costs in the cause.