SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Parbhu Lal Vs. Chattar and ors.

Parbhu Lal Vs. Chattar and ors.

SooperKanoon Citation : sooperkanoon.com/456921

Court : Allahabad

Decided On : Mar-06-1925

Reported in : AIR1925All557

Appellant : Parbhu Lal

Respondent : Chattar and ors.

Judgement :

Mukerji, J.

1. This appeal and appeal No. 1106 of 1923 arise out of similar facts. It appears that certain persons executed an usufructuary mortgage in favour of three persons Badam, Uday Ram and Chiranji Mai. Badam made a mortgage to plaintiff-appellant in the present appeal and Uday Ram and Chiranji Mal executed a simple mortgage in favour of the appellant in the other appeal. Among the properties mortgaged was the interest of the mortgagors as usufructuary mortgagees. The plaintiffs brought their respective suits to recover money and claimed the right to bring to sale the mortgagee's interest of Badam in one suit and Uday Ram and Ghiranji Mai in the other. The mortgagors of these mainly contended that they had satisfied the usufructuary mortgage and redeemed the property and that therefore there was nothing to be sold.

2. Both the Courts found against the plaintiffs. They held ihter alia, that the original mortgagors had no notice of transfer of the mortgagee rights and were therefore

not bound to pay the money to the present plaintiffs-appellants instead of to their original mortgagees.

3. Two points have been taken in the memorandum of appeal, The first is that registration is notice. This point has been fully and finally settled by the case of Tilakdhari Lal v. Khedan Lal A.I.R. 1921 P.C. 112, by their Lordships of the Privy Council, who held that a registration of subsequent transactions was no notice to persons who were parties to earlier transactions. In the case before their Lordships of the Privy Council it was urged that a prior mortgagee should be charged with the notice of a subsequent registered transfer. Their Lordships repelled the argument. On the same principle it cannot be said that the original mortgagors would have notice of the transfer in favour of their respective plaintiffs merely by reason of the fact that the transfers in their favour were registered. This argument therefore fails.

4. The second argument was that on the facts as found by the Court below a notice in law was established. The point is really a question of fact and the finding of the Judge below should be conclusive. The learned Counsel however read out the judgment of the learned appellate Judge and I am satisfied that he has not misapplied any rule of law or has not drawn any improper conclusion from the facts before him. The direct evidence of transfer consisted of a letter sent by post which was received back with the word 'refused' marked on it. There is no evidence to show that the letter had ever been tendered to the original mortgagors or that they had written the word 'refused'. The next item of direct evidence was an application to the Sub-Registrar presented on the day the deed of redemption was registered asking him not to register the deed. The Judge finds that it was not proved that the application had been presented before the deed was actually registered. Evidently the learned Judge means that application may have been presented after the executant had appeared and acknowledged the execution of the document. The finding therefore was a legitimate finding from the facts proved.

5. The appeals fail and the present one is dismissed with costs which will include counsel's fees in this Court on the higher scale.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com