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Court : Punjab and Haryana

Decided On : Aug-21-1953

Reported in : AIR1954P& H31

Judge : Khosla and; Soni, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 415; [Transfer of Property Act, 1882](#) - Sections 3 and 55(1)

Appeal No. : Criminal Revision No. 453 of 1953

Appellant : Kuldip Singh

Respondent : State

Advocate for Def. : K.S. Chawla, Adv. General

Advocate for Pet/Ap. : H.L. Sibal and; B.S. Chawla, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

Khosla J.

1. The facts giving rise to this reference by my learned brother Soni J. are given in his order of 21-7-1953, and are briefly as follows.

Moti Parshad brought a complaint against the petitioner Kuldip Singh alleging that he had been cheated of a sum of Rs. 4,000/-. The facts alleged by him were that Kuldip Singh agreed to sell him an area of land for a sum of Rs. 4,000/- and represented that this land was free from all encumbrances. Kuldip Singh was paid a sum of Rs. 2,000/- on 10-6-1948, and by way of receipt he executed a document Ex. P. A. In Ex. P. A. Kuldip Singh mentioned quite clearly that the land was free from all encumbrances. The sale deed was to be registered within a period of one year and it was in fact executed on 24-4-1949. In the sale deed Kuldip Singh again recited the fact that the land was free from all previous encumbrances.

In point of fact the land formed part of a larger area the whole of which was mortgaged on two previous occasions, once in favour of Amar Singh for a sum of Rs. 1,20,000/- and a second time in favour of Kidar Nath for a sum of Rs. 82,000/-. Amar Singh filed a suit for the realisation of his mortgage money by the sale of this property and obtained a decree. In execution of the decree the land was sold and since Amar Singh's claims were not fully satisfied the complainant Moti Parshad lost his land and the money he had paid for it. It was then that he brought the present complaint against Kuldip Singh,

2. Kuldip Singh's defence was that he had not made any representation to the complainant that the land was free from encumbrances. A further point argued on his behalf was that since the previous mortgages were effected by means of registered deeds the complainant must be presumed to have had notice of these transactions and so it could not be said that Kuldip Singh had been guilty of any dishonest concealment or any dishonest representation. This defence was repelled by the learned Magistrate and Kuldip Singh was convicted and sentenced to three months' rigorous imprisonment.

An appeal was filed in the Court of the Additional Sessions Judge, Ambala, but this appeal failed. When the matter came up in revision before my brother Soni J. the law point was once again argued and it was contended that the registration of a document which must under law be registered is constructive notice to the whole world and, therefore, Moti Parshad must be deemed to have had notice of the previous mortgages, and, therefore, it could not be said that Moti Parshad had

been cheated since, in law, he already knew the factum of the previous charges.

My brother Soni thought that this point was of some importance and should be considered by a larger Bench and we have, therefore, heard arguments of counsel on this point and also the other points arising in the case.

3. The argument of Mr. Sibal who appeared on behalf of the petitioner is based on the wording of Sections 3 and 55, T. P. Act. Explanation I to Section 3 reads as follows :

'Where any transaction relating to immove-able property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration * *.'

'Section 55(1)(a) is in the following terms :

'The seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover.'

Mr. Sibal contends that the previous, mortgages were effected by means of registered deeds and, therefore, by virtue of the explanation to Section 3, Moti Parshad must be deemed to have had notice of these mortgages. Further Moti Parshad could by exercising ordinary care have discovered that the property which he was purchasing formed part of a much larger estate which was already under mortgage. Therefore, Kuldip Singh was not bound to disclose to him the previous charges and Moti Parshad must be deemed in law to be aware of them, and, that being so, Moti Parshad was not cheated, for no representation was made to him.

4 The Transfer of Property Act deals with the rights of individuals in the property which is the subject-matter of any transaction. It is not concerned with whether a person has been cheated or not. The object of the explanation to Section 3 is to safeguard the interests of a third party who has acquired a good title under a previous registered instrument but it does not in any way alter or modify the criminal liability of a person who deliberately suppresses certain facts or misstates

certain facts. If 'A' has sold some property to 'B' by a registered deed and he then sells it again to 'C', 'C' cannot acquire a good title in the property because he must be deemed to have had notice of the previous registered sale deed in favour of 'B' but nevertheless he was made to part with money on a misrepresentation made by 'A' and therefore 'A' is guilty of the offence of cheating. This is the case which is mentioned in illst. (i) to Section 415, Penal Code. The doctrine of constructive notice cannot be imported into criminal law for the purpose of determining whether a person is guilty of the offence of cheating or not.

The essential ingredients of cheating are (a) dishonest intention upon which (b) a false representation is based and in consequence of which (c) valuable property is delivered to the person making the false representation. What we have to consider in criminal law is what is the actual state of facts and whether the person cheated did know the real facts or not. That he must be deemed to know certain facts because of the operation of law will not affect the case. That will only affect his rights in the property he acquires. The doctrine of constructive notice is intended to safe-guard the interests of a third person and not to exonerate the offender who obtains money by making a false representation.

The word 'dishonestly' is defined in Section 24, Penal Code ;

'Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'.'

If is the intention which is important and not whether a man is under a legal duty to dis-close or suppress facts within his knowledge. Therefore, where a person with the intention of causing wrongful loss to another makes a false representation to him or suppresses certain facts, he will be said to have acted dishonestly even if the law does not require him to state the truth. Therefore, the non-disclosure of the previous encumbrances will not affect the rights of the previous mortgagees and will not pass a complete title to the Purchaser; the purchaser may nevertheless have been cheated. The extent of Moti Parshad's rights in the property which he acquired has nothing whatever to do with the fact that he was cheated.

Mr. Sibal cited a decision of the Sind Judicial Commissioner's Court reported as -- 'Karachi Municipality v. Bhoj Raj', AIR 1915 Sind 21 (A). In this case, the previous registered mortgage was not disclosed to the purchaser and the learned Judicial Commissioner held that no offence of cheating was committed because the vendor was not bound to disclose the previous mortgage which was a registered transaction. I am extremely doubtful of the correctness of this dictum but in the present case we find that there was a positive averment by Kuldip Singh that the land was free from encumbrances. It was not a case of mere silence. In -- 'Shivnath Sahibram v. JethanandMoorij Mal', AIR 1937 Sind 56 (B), the vendor had made a representation to the effect that there was no charge or encumbrance on the property. This representation was false as there was a previous unregistered mortgage upon the land. Davis, J. C. held that the vendor had committed the offence of cheating, as this was not a case of mere concealment or non-disclosure of facts he was not bound to disclose, but a case of false representation deliberately made for the purpose of deception.

In the present case Kuldip Singh made a false representation for the purpose of deception. I would, therefore, hold that the doctrine of constructive notice as set out in the explanation to Section 3, T. P. Act has no relevance for the purpose of determining whether a person has committed the offence of cheating or not. What is relevant is whether as a matter of fact the complainant knew of the true state of affairs or not and if he was induced to part with valuable property as the result of misrepresentation made to him. In the present case it is clear that Kuldip Singh received a sum of Rs. 2,000/- on making a misrepresentation regarding the property which he was selling to Moti Parshad.

5. Mr. Sibal also tried to show that Moti Parshad must, in point of fact, have known of the previous mortgagees but on this point the decision of the learned Sessions Judge is quite clear and we must assume that, on the evidence, Moti Parshad did not know anything about the previous encumbrances when he paid Rs. 2,000/- to the petitioner. The petitioner's conviction must, therefore, be upheld. Regarding the sentence the petitioner has already undergone a few days' imprisonment and I do not think the nature of the offence is so serious to warrant a severe sentence. The ends of justice will be served if the sentence is reduced to the term of

imprisonment already undergone and a fine of Rs. 2,000/-. In default of payment of fine the petitioner will undergo the un-expired portion of sentence substantively awarded to him.

6. The cross revision petition praying for enhancement of the sentence awarded to the petitioner fails and is dismissed. The petitioner is allowed three weeks' time to pay the fine.

(7) SONI J. : I agree.

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