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Rameshwar Vs. Tarasingh and ors.

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Court : Rajasthan

Decided On : Oct-08-1957

Reported in : AIR1958Raj269

Judge : I.N. Modi, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 100-101 - Order 14, Rule 1 - Order 20, Rule 6 - Order 41, Rule 25; Sale of Goods Act, 1930 - Sections 22 and 27

Appeal No. : Second Appeal No. 250 of 1953

Appellant : Rameshwar

Respondent : Tarasingh and ors.

Advocate for Def. : S.T. Powal, Adv. for Respondent No. 1

Advocate for Pet/Ap. : B.B. Desai, Adv.

Disposition : Appeal allowed

Judgement :

I.N. Modi, J.

1. This, is a second appeal by the defendant Rameshwar against the judgment of the District Judge, Jodhpur, dated 18-8-1953, by which he set aside the judgment

and decree of the Civil Judge, Jodhpur, dismissing the plaintiff's suit and decreed it. The suit was for a declaration of of title with respect to a certain lorry No. RJQ 1221.

2. The suit out of which this appeal arises was brought by Tarasingh plaintiff respondent No. 1 against the present appellant and defendant respondent Goverdhandas. Respondent Goverdhandas was the owner of the lorry. The plaintiff respondent Tarasing brought his suit on the allegation that he had purchased the said lorry from Goverdhandas for a sum of Rs. 2000/- on 9-7-1949, for which the latter had passed a receipt (Ex. P-l). A joint application had been made in the office of the Deputy Inspector General of Police for the grant of a licence with respect to the lorry by Tarasingh and Goverdhandas on the same day, and a licence was granted to Tarasingh on 11-7-1949.

Plaintiff respondent Tarasingh was compelled to bring the suit because the defendant appellant had launched a criminal complaint against defendant Goverdhandas under Section 406 I. P. C. in the court of the Sub-Divisional Magistrate Pali, and the lorry was attached by that court in connection with that complaint. It is important to mention here that respondent Goverdhandas had made a mortgage of certain immovable property of his and also the lorry in question to defendant appellant Rameshwar by a registered mortgage deed (Ex. D-3) dated 27-7-1947, as a security for a loan of Rs. 9000/- which the latter advanced to the former.

Thereafter Goverdhandas obtained possession of the lorry from Rameshwar under a rent-note (Ex. D-5) dated 28-7-1947. The rent note was also registered. As already stated above, Tarasingh purchased the lorry from Goverdhandas in July, 1949, that is, after a period of about two years of the mortgage in favour of Rameshwar. As the lorry had in connection with Rameshwar's complaint been attached by the criminal court on 19-8-1949, Tarasingh respondent brought the present suit in the court of the Additional Sub. Judge, Jodhpur, on 11-10-1949.

In para 4 of his plaint, the plaintiff respondent stated that the defendant appellant Rameshwar had also taken part in settling the deal with respect to the lorry in favour of Tarasingh for Rs. 2000/-.

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Para 7 of the plaint further stated that the plaintiff was a 'bona fide purchaser for value in the open market'.

In this connection it was further stated that the licence for the lorry was at the time of the purchase in the name of defendant Goverdhandass, the insurance policy was also in his name and the petrol coupons also used to be issued to him, and, therefore, the plaintiff was satisfied that the defendant Goverdhandas was the owner of the lorry and, therefore, the purchase was made from him. It is remarkable that the plaint studiously avoids the mention of the fact that Tarasingh was a purchaser for value 'without notice of defendant appellant Kame-shwar's mortgage'.

3. Defendant Respondent Goverdhandas the vendor admitted the plaintiff's claim. Defendant appellant Rameshwar contested the suit on a large number of grounds but it is not necessary to mention all of them for the purposes of the present appeal.

The main pleas which call for mention are that this defendant was a prior mortgagee of the lorry and that defendant Goverdhandas had only obtained possession of it under a rent-note, and, had, therefore, no right to sell the lorry. It was also contended that the transaction of sale by Goverdhandas in favour of Tarasingh plaintiff respondent was merely a sham transaction, and it was, therefore, in no way binding on the contesting defendant.

With respect to the allegation made in para 4 of the plaint, this defendant categorically stated that he was not aware of the transaction of sale of the lorry on which Tarasingh relied at the time the transaction was made and that he came to know of that after it had been made, and shortly after that he filed a complaint against Goverdhandas for criminal breach of trust.

Lastly Rameshwar further contended that the plaintiff Tarasingh was not a bona fide purchaser for value and without notice and that Tarasingh had not paid the sum of Rs. 2000/- at all to Goverdhandas, and, in any case, he (Tarasingh) knew

that Rameshwar held a mortgage with respect to the lorry. It may also be mentioned here that both Goverdhandas and Rameshwar live in Pali while the plaintiff respondent Tarasingh lives in Jodhpur.

4. The suit was eventually transferred to the Court of the Civil Judge, Jodhpur, who dismissed it. The relevant findings of the learned trial Judge briefly put were that Tarasingh plaintiff respondent was a purchaser of the lorry for value, that Rameshwar held a mortgage with respect to the lorry in question which was of a date prior to the sale thereof by Governdhandas in favour of the plaintiff respondent, and though the defendant had not succeeded in proving that the transaction of sale in favour of the plaintiff respondent was collusive, still there were reasons to believe that the plaintiff respondent was aware of Rameshwar's debt and consequently all that the plaintiff respondent got in law was the equity of redemption which Goverdhandas himself had and no more, and on that view of the whole matter that court dismissed the plaintiff suit.

The plaintiff respondent then went in appeal to the learned District Judge who reversed the judgment of the trial court and decreed the plaintiff's suit. The learned Judge of the lower appellate court agreed with the court below in its finding that Goverdhandas had pledged his lorry No. 1221 with the defendant appellant Rameshwar but he formed the opinion that there was nothing on the record to suggest that Tarasingh had notice of Rameshwar's claim as a mortgagee with respect to, this property.

Neither of the two courts recorded a clean finding as to whether the plaintiffs allegation that; Rameshwar had assisted in the transaction of sale by Goverdhandas in favour of the plaintiff respondent Tarasingh, or that Rameshwar was, at any rate, present at that time was proved and to that extent the judgments of both courts are, to my mind, entirely unsatisfactory, for that was a pivotal point of the plaintiff's whole case. The argument of the learned District Judge, however, was that if Rameshwar's presence was accepted at the transaction of sale and the version that Rs. 200/- were paid to Rameshwar out of Rs. 500/- received from Tarasingh was correct then Rameshwar was a consenting party to the sale, and the sale had, therefore, taken place with his consent.

It is to be regretted that the lower appellate court which was a final court of fact should not have come to grips with the entire evidence in the case, and recorded a finding which is more or less hypothetical. The learned Judge also committed a grave error while stating the facts of the case when he said that the plaintiff Tarasingh had pleaded that he was a bona fide purchaser for value in open market without any notice of the incumbrance, on the vehicle in question. Now, it may be stated without the slightest fear of contradiction that the plaintiff had throughout his plaint deliberately avoided the case that he had no notice of the incumbrance of the defendant appellant Rameshwar on the lorry purchased by him from Gover-dbandas.

On the other hand, his case was that Rameshwar was present there; not only that, Rameshwar also assisted him in the transaction of the sale. On this pleading it is clear that the question of lack of notice was not and could not have been the plaintiff Tarasingh's case. His case put in one word was that he had purchased the lorry in the presence and with the express or implied consent of the mortgagee, namely, Rameshwar.

The entire evidence led on behalf of Tarasingh is in that tenor. It is, therefore, surprising that the learned District Judge should have thought the case of the plaintiff respondent to be that he was a bona fide purchaser for value without any notice. In the light of this criticism, it is easy to see that the judgment of the learned District Judge is not at all satisfactory.

I am also sorry to say that the learned Judge has not taken the trouble to come to close quarters with the evidence of the parties which it was his duty to do as a final court of fact particularly when he was reversing the judgment of the trial court.

5. At this stage I also wish to call attention to the fact that the issues framed in the case have been not quite satisfactory. One important issue was whether the defendant appellant Rameshwar held a valid mortgage with respect to the lorry in question, which was of a date prior to that of the transaction of sale by Goverdhandas in favour of Tarasingh.

This issue was not framed at all though the parties were allowed to lead evidence on it. Another important issue which directly arose in the case was whether, if the finding on the aforesaid issue was in favour of the defendant appellant Rameshwar, Tarasingh had purchased the lorry in question at a transaction in which defendant appellant Rameshwar had assisted; and if so, what would be the effect thereof. Again, though this issue was not framed, the plaintiff was allowed to lead abundant evidence on this point.

A further possible issue, provided the requisite pleading was there, might have been whether Tarasingh was a bona fide purchaser for value without notice. But so far as this last issue is concerned, I am clearly of opinion that it was excluded in the circumstances of the case, inasmuch as the plaintiff respondent studiously avoided to place his reliance upon lack of notice, and all that he was claiming in that connection was that he was a purchaser for value in the open market.

Evidently, the plaintiff was relying on the doctrine of 'market overt' which so far as I understand, has not been recognized by the Legislature in India, and even that doctrine, to my mind, protects innocent transferees, and not transferors (transferees?) even though for value but with notice of a prior incumbrance.

It might have been necessary to remand the case for a retrial after re-framing the issues which properly arose in this case and which should have been framed by the trial court; but on a closer consideration, I have arrived at the opinion that it is unnecessary to do so as the parties have led all the evidence which they desired to including the evidence on the issues which have not been framed in so many words, and such a course was likely to protract the litigation still further.

6. For the reasons mentioned above, I have derived very little assistance from the judgment of the learned District Judge, and, consequently, the entire evidence was re-examined in this court as if it was a court of first appeal.

7. Now, there is a concurrent finding of the two courts below that Goverdhandas had made a mortgage of his lorry along with his house in favour of the present appellant Rameshwar for a sum of Rs. 9000/-. This finding is fully supported by the evidence on the record, namely, the mortgage deed Ex, D-3 and the receipt Ex. D-

4. I see no reason to interfere with this finding of fact, and, clearly, it is binding on this Court.

It is also proved beyond all doubt that themortgagor Goverdhandas had obtained this lorryback under a rent-note Ex. D-5. This rent-note is also registered. Goverdhandasadmitted his signature on both these documents Ex. D-3 and D-5 but he further contendedthat he had never hypothecated the lorry to thedefendant appellant Rameshwar by means of thesedocuments and that all that he had done was tohave mortgaged the house.

The trial court refused to believe this version of Goverdhandas, and I entirely agree with the finding of the trial court in this connection. (His Lordship went through the evidence and continued). I, therefore, hold that the appellant Rameshwar held a valid mortgage with respect to this lorry along with some other property from Goverdhandas, and that Goverdhandas had obtained possession of the lorry from Rameshwar under a rent-note which was also duly registered.

8. The next and the most important question that arises is whether on the above finding, the plaintiff respondent Tarasingh is entitled to be declared the owner of this vehicle by purchase from Goverdhandas, this latter transaction being admittedly of a subsequent date to the date of the mortgage. The case of the plaintiff respondent in this connection, as already stated above, was that he was entitled to his claim because Rameshwar had himself assisted in the sale and was, at any rate, present at the time it took place in July, 1949.

According to para 3 of the plaint, Tarasingh gave a sum of Rs. 2000/- to Goverdhandas on the 9th July, 1949. A receipt executed by Goverdhandas has been filed in support of this story, and P.W. 2 Rampratap is its attesting witness. This was the story mentioned in the plaint. When evidence actually came to be given, plaintiff respondent's witnesses gave out a different story namely, that the deal as to the sale of the lorry by Goverdhandas in favour of Tarasingh had been settled about the 2nd of. July, 1949, and that Tarasingh then paid a sum of Rs. 500/- to Goverdhan Das and that Rameshwar defendant appellant was also present at the time and that Goverdhandas paid a sum of Rs. 200/- thereout to Rameshwar also,

It is further said that the balance of Rs. 1500/-was agreed to be paid after a week or so. Accordingly on the 9th July, 1949, a sum of Rs. 1500/-was further paid by Tarasingh to Goverdhandas and the receipt Ex. P-1 for Rs. 2000/- was executed on the same date. P.W. 1 Baluram has been produced as the scribe of this receipt and P.W. 2 Rampratap is its attesting witness. P.W. 3 Pukha Bharti has also been produced by Tarasingh as a witness who was present both when the bargain was settled about the 2nd July and later on the 9th July when the full payment had been made, and all these witnesses unanimously say that Rameshwar was present at the time both when the deal was settled in the first instance and later when the entire payment had been made by Tarasingh to Goverdhandas.

It is important to remember in this connection that Rameshwar and Goverdhandas lived in Pali and Tarasingh lived in Jodhpur at all material times. It is greatly to be regretted that both courts below have not scrutinised this evidence with any care whatsoever and proceeded to decide the case before them more or less in a very superficial manner.

9-12. (His Lordship further discussed the evidence and continued).

13. This is all the evidence which bears on the question whether Rameshwar had or had not taken part in fixing up the sale of the lorry in question or was present at the time the sale transaction between the plaintiff respondent Tarasingh and the defendant respondent Goverdhandas took place. I have no hesitation in saying that the case put forward by the plaintiff respondent and Goverdhandas defendant respondent is all false. The story appears to me to be quite fantastic, having regard to the alleged conduct of Rameshwar both at the time of the sale and subsequent to it, with the result that I am not prepared to believe it tor a single moment.

The more I consider this evidence, the more I am convinced that Rameshwar could not have been present at the time of the sale much less that he should have assisted it.

14. I next turn to the legal implications of this finding. Once I come to the conclusion that Rameshwar was not at all present when this sale took place or that

be never encouraged or assisted the plaintiff respondent to enter into it, it follows that the definite case with which the plaintiff respondent came to court collapses to the ground.

15. It is however argued on behalf of the plaintiff respondent that even if Rameshwar was not present at the sale, this Court should come to the conclusion that the plaintiff respondent was a bona fide purchaser for value in the open market and without notice, and learned counsel for the plaintiff respondent relies upon Section 27 of the Sale of Goods Act. Now Section 27 reads as follows:

'27. Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell:

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.'

This seetion in the first place gives effect to the general principle of law that no man can pass a better title than he possesses: ''nemo dat quod non habet'. In other words a person buying goods from another who is not the owner thereof and who does not sell them with the consent of the owner acquires no better title to the goods than the seller himself.

This is indeed as it should be; otherwise the title of the true owner would stand imperilled oa account of the act of an importer. This rule, however, in the interest of trade and commerce is subject to certain well-known exceptions and the two exceptions which are provided in the section itself are (i) that the owner of the goods is precluded by bis conduct from denying the seller's authority to sell.

Clearly this exception is based on a branch of the rule of estoppel. The second exception arises where a mercantile agent with the consent of the owner being in possession of the goods or of documents of title with respect to them makes a sale in the ordinary course of business. Then a buyer from such a mercantile agent acting in good faith and not having notice that the seller has no authority to sell acquires a good title Now, so far as the second exception is concerned, it has no bearing to my mind for our present purposes because the sale in this case was not by a mercantile agent.

16. Turning, therefore to the first exception, the question is whether Rameshwar can be held to be guilty of any conduct which would preclude him from asserting his own title and resisting that of the plaintiff respondent. Reliance is placed on a two-fold argument in this connection. The first argument is that Rameshwar himself was present at the sale and had assisted in it.

I have held above that this story cannot be accepted at its face value. It is argued in the second place that Rameshwar had allowed the lorry to remain in possession of the mortgagor Goverdhandas, that the latter was taking petrol coupons in his own name and that he held a licence also in his own name for the lorry, and therefore, the plaintiff respondent was justified in taking Goverdhandas to be the true owner and that would preclude Rameshwar from effectively resisting the plaintiffs suit.

I have carefully considered this aspect of the case, and, in my opinion, the answer thereto is of a two-told character. In the first place, it is established by incontrovertible evidence that Rameshwar had obtained a valid mortgage with respect to the lorry in his favour from Goverdhandas which was of a prior date to the safe in favour of the respondent Tarasingh.

It is further established that Goverdhandass' possession of the lorry was thereafter merely on account of a rent-note duly executed by him in favour of the appellant. That being so, he had no authority to sell, and the plaintiff respondent Tara-singh was not within his rights to purchase the lorry, unless he brought himself within the exceptions recognized under the principle embodied in Section 27 or other allied sections of the Sale of Goods Act.

The plaintiff respondent would certainly have brought himself within the protection of the exccp-tion if, for example, he had succeeded in establishing the case which he set out to prove in his plaint, namely, that Rameshwar had assisted in the sale by Goverdhandas in his favour. That has not been established. As regards Goverdhandass' possession I am of opinion that it was left with him in all likelihood as a facility to enable him to pay off the debt. I am not prepared to accept that because the appellant agreed to give a reasonable indulgence like this to the mortgagor he can in law be penalised for that.

I know of no law which imposed a compulsory duty on the mortgagee appellant that in no case he should have allowed the mortgagor to keep the mortgaged property under his possession even though under a duly executed rent-note. With respect to the other considerations, raised by the plaintiff respondent, namely, that the licence for the lorry still stood in the name of Goverdhandas and that the insurance policy also was in his name and he used to obtain the petrol coupons himself.

I am of opinion that the law likewise imposed no duty upon Rameshwar while he obtained the mortgage of the lorry in his favour to have the licence changed in his name or to have a new insurance policy effected in his name or do any other similar things on his own behalf. Simply because Rameshwar failed to perform any such acts of prudence, I am altogether unable to hold in law that he made any representation to Tarasingh plaintiff respondent or was guilty of any conduct which would preclude him (Rameshwar) from asserting his own title.

I hold accordingly. The next answer is that it clearly appears to me that the plaintiff respondent Tarasingh had notice, either actual or constructive, of Rameshwar's mortgage with respect to the lorry in question. That appears on the frame of the plaint itself. Not a single word is said therein to show that the plaintiff respondent had no notice. I am not at all prepared to agree with the conclusion of the learned District Judge that there is not an iota of tangible evidence to show that Tarasingh had knowledge of the mortgage.

I have analysed the evidence of the plaintiff and his witnesses with sufficient fulness, and, in my opinion, it is rightly appreciable only on the hypothesis that the

plaintiff was very much cognisant of the defendant's mortgage. At any rate, enough facts had come to the plaintiff's notice which should have put him on an enquiry, and if he had pursued it, he must have come to know of the mortgage on the lorry and the .house which had, be it remembered, been made by a registered deed.

I further desire to point out that any finding, as to Rameshwar's absence during the sale transaction is or can be no argument in favour of the conclusion, as the learned District Judge seems to have thought, that the plaintiff-respondent had no notice. Such reasoning is entirely fallacious.

To my mind, Tarasingh's having or not having knowledge as to the prior encumbrance would not solely depend upon Rameshwar's presence or absence. Rameshwar might have been absent and still Tarasingh might well have had notice of Rameshwar's mortgage. This knowledge might have been derived from any other source including Goverdhandas himself.

In fact the latter, according to P. W. Baluram was required to undertake in the receipt Ex. P-2 that if anybody (and that would clearly include Rameshwar) should raise a claim with respect to the lorry, he (Goverdhandas) would satisfy him. Again, the entire evidence produced by the plaintiff weighs heavily against hin, so far as this aspect of the case is concerned, and he cannot get rid of its effect because this Court has come to the conclusion that Rameshwar was not present at the relevant time.

From the entire evidence led by the plaint respondent in this connection, the conclusion is irresistible that, even on the finding that Rameshwar was not present at the time of the sale or he had not assisted in it, Tarasingh and his supporters were very much conscious of Rameshwar's hypothecation with respect to the lorry.

If that was not the case, the plaintiff-respondent would have definitely pleaded want of notice in his plaint in addition to the other things which he pleaded. In his long statement, both in the examination-in-chief and the cross-examination, the plaintiff-respondent does not say a word that he had no notice of Rameshwar's mortgage.

In these circumstances I am clearly of opinion that the plaintiff-respondent has failed to bring himself within any of the exceptions to the principle contained in Section 27 of the Indian Sale of Goods Act, and, therefore, the maxim 'nemo dat quod non habet' (no man can pass a better title than he has) must prevail.

17. I might now briefly refer to the cases on which learned counsel for the plaintiff-respondent placed his reliance. These arc Sreeram Narasiah v. Venkataramiah, AIR 1919 Mad 779 (1) (A); Shwe Hnyin v. Full Chand, AIR 1923 Rang 60 (B) and Backer Khorasanee v. Ahmed Esmail Jamal, AIR 1928 Rang 28 (C).

18. The facts in Sreeram Narasiah's case (A) were that a bull was left in the mortgagor's possession by the mortgagee and was eventually purchased by the contesting defendant from the mortgagor's vendee. A plea was raised on behalf of the defendant that he was a bona fide purchaser for value without notice of the hypothecation.

The learned Judges observed that 'when goods are left in the possession of the mortgagor, a wide door is opened for fraud, and when the equities between the innocent purchaser and the mortgagee have to be weighed, the preponderance must be given to the purcahser, for the mortgagee has, by his omission to secure possession of the goods, facilitated the commission of the fraud.'

The judgment is a short one, and all the facts are not stated therein; but it appears that this was a case of the contesting defendant being a purchaser without notice of the prior encumbrance. This case, is, therefore, clearly distinguishable from the present.

19.The case of Shwe Hnyin v. Ful Chand (B) is also one where the Court came to the conclusion that the contesting defendant had no notice of the plaintiffs mortgage, whereas I am disposed to find in the present case that the plaintiff respondent had either actual notice of Rameshwar's mortgage or that the plaintiff respondent was made aware of certain facts which should have put him on an inquiry and if he should have inquired, he would have certainly come to know of the defendant appellant's mortgage without any trouble.

20. In Backer Khorasanee's case (C), the appellant purchased the stock in-trade of P. which had been earlier mortgaged with the respondent. The respondent was not in possession of the stock-in-trade, and the appellant was not aware of the respondent's mortgage when he purchased the stock-in-trade.

In these circumstances it was held that, where a person purchased goods which were already mortgaged with another but the purchaser was not aware j of the mortgage when he purchased the goods from the mortgagor who was in possession of them, he took them free from the mortgage. This ease also is of no help to the plaintiff respondent inasmuch as the purchaser had taken the goods without notice of the earlier mortgage.

21. As against these cases, I wish to invite reference to Orient Bank v. Mt. Ghulam Fatima AIR 1920 Lah 59 (D). In that case one S borrowed money from a bank on a promissory note by hypothecating his stock-in-trade as security for repayment of the loan, S died.

Thereafter his mother sold the entire stock-in-trade to a cousin of his N. The bank obtained a decree against the mother and sought to attach the sale proceeds of S's stock-in-trade which had been ordered to be sold by the court. The question was whether the bank could follow the property into the hands of the purchaser N.

The learned Judges held that the bank had a prior claim against the proceeds of the stock-in-trade of S, and that claim could be enforced against the purchaser. The reasoning on which this conclusion was come to was that it was not necessary that the bank must have taken possession of the stock-in-trade. The stock was the means whereby the debtor earned money and might have enabled him to discharge the debts and, therefore, there was nothing wrong if the bank allowed this indulgence to S, and that would not stand in the way of the prior claim of the bank being enforced against the claim of the purchaser,

22. Before concluding I should also like to refer to Mercantile Bank of India Ltd. v. Central Bank of India Ltd, AIR 1938 PC 52 (E) in this connection. The facts in this case were that bank A advanced certain loans to a merchant on the pledge of railway receipts. According to its usual practice, the bank used to hand over the

receipts to the merchant for the purpose of acquiring the goods covered by the receipts and storing them in the go-downs of the bank.

The merchant, however, after having got possession of the receipts fraudulently pledged them with bank B and obtained a second advance. Consequently, bank A filed a suit against bank B for conversion wherein the latter bank raised a plea of estoppel against bank A. It was held by their Lordships of the Privy Council that the plea of estoppel could not prevail, inasmuch as bank A owed no duty to bank B in the matter, and that there was no representation by bank A to bank B or anybody else that the merchant had any title to obtain any advance on the goods for themselves.

Their Lordships also considered the previous decision of the Board in Commonwealth Trust Co. v. Akotey, 1926 AC 72 (F). In that case it was held that

'to permit goods to go into the possession of another, with all the insignia of possession thereof and of apparent title, and to leave it open to go behind that possession so given and accompanied, and upset a purchase of the goods made for full value and in good faith, would bring confusion into mercantile transactions and would be inconsistent with law and with the principles so frequently affirmed, following Lickbarrow v. Mason (1787) 2 TR 63 (G).'

Their Lordships observed that it was impossible to accept that view as a true statement of the law bearing on the subject and held that the principle of estoppel depended upon a duty, and that it must be the neglect of some duty that is owing to the person led into that belief, or, what comes to the same thing, to the general public of whom the person misled is one, and not merely neglect of what would be prudent in respect to the party himself, or even of some duty owing to third persons with whom those seeking to set up the estoppel are not privy.

It was also argued before their Lordships that bank A did not put its stamp on the railway receipts and that it should have taken that precaution which it later adopted but this contention was also repelled, and it was held that the failure to affix stamps by bank A would make no difference, it being not the practice nor duty as between the two banks to adopt such a practice. Their Lordships held that bank A

was entitled to rely on the rule of law that no one could pass a better title than he possessed.

In my humble judgment, this case is quite instructive as a guide to a proper decision in the present case, And relying on the principles propounded therein, I hold that the defendant appellant did not commit any breach of duty that he might have owed to the plaintiff respondent or for that matter anybody else, and, consequently, there could be no estoppel against him on the principle of estoppel by negligent conduct or by representation.

23. I need scarcely repeat what I have already stated above that the plaintiff respondent's plea as to his having made the purchase without notice does not avail him at all: the reasons, if I may sum them up in one sentence being that no plea of want of notice was at all raised, and, secondly, even if such a plea be taken to have been raised, it stands negatived by the plaintiff respondent's own evidence which goes a long way to show that the defendant appellant's mortgage was known to the plaintiff respondent or, in any event, it would have been known to him if he had made reasonable inquiries.

I may also add that the plea of market overt which the plaintiff respondent raised in the 7th para of his plaint cannot be of any help to him either, and the learned District Judge seems to have landed himself into confusion so far as that aspect of the case is concerned. The doctrine of market overt is a principle of English Law, and Section 22 of the English Sale of Goods Act provides for this doctrine in the following words:

'Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of seller.'

Suffice it to say that the Indian Legislature did not think it proper to introduce this principle into Indian law as being unsuitable to Indian conditions. In any case, it must be remembered that the privilege protects only innocent buyers. This principle, therefore cannot be invoked by the plaintiff respondent in his aid.

24. For the reasons mentioned above, the plaintiff respondent Tarasingh cannot succeed in getting the declaration he seeks, namely, that he is the owner of the lorry in suit by virtue of his having purchased it from Goverdhandas subsequently to the latter's mortgage on the ground of estoppel or on the ground that he is a bona fide purchaser for value in the open market.

25. I, therefore, allow this appeal, set aside the judgment of the learned District Judge, and dismiss the plaintiff's suit with costs throughout.

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