

Tinnappa Chetti Vs. Mumgappa Chetti

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Court : Chennai

Decided On : Aug-27-1883

Reported in : (1883)ILR7Mad107

Judge : Kindersley and ;Hutchins, JJ.

Appellant : Tinnappa Chetti

Respondent : Mumgappa Chetti

Judgement :

Kindersley and Hutchins, JJ.

1. The appellant and respondent purchased the same piece of ground (No. 2) which had been entered under different numbers in the same sale proclamation. The respondent was the decree-holder, and had put the Court in motion. He bought the land as No. 7 on the 12th August, his sale was confirmed on the 14th October, and the certificate issued on the 18th December. The appellant bought it as No. 40 on the 30th August, and his purchase was confirmed on the 31st October, but his certificate bears date 17th November and has been registered.

2. The first point urged in appeal was that the appellant's certificate bears ,a date prior to that of the respondent, but this was abandoned on it being pointed out that the respondent's certificate disclosed the fact that his purchase had been confirmed before the appellant's.

3. The third argument was that the respondent's unregistered certificate must give way to appellant's, which had been registered. We hold, however, that the respondent's certificate must be regarded as a registered document, a copy having been transmitted by the Court and filed by the Registrar under Section 89 of the Act, that being the method of registration prescribed by the Act for sale certificates.

4. The appellant's second objection is that the respondent is estopped from setting up his own purchase in opposition to the appellant's, and this, we think, must be allowed to prevail. Under Section 237 of the present Code of Civil Procedure, the respondent was bound to disclose the judgment-debtor's interest to the best of his belief, and so far as he had been able to ascertain it. The old Code did not expressly impose any such obligation, but it was nevertheless held that a judgment-creditor, who sold property as that of his debtor, was afterwards estopped from setting up a previous mortgage, which had been created in his own favour, *Dullab Sirkar v. Krishna Kumar Bakshi* 3 B.L.R. 407. Estoppel by conduct is now defined in Section 115 of the Evidence Act. It is only necessary that the one person shall intentionally cause the other to believe the thing to be true, it is not necessary to show that he himself believed it to be false, or that he had any fraudulent intention. By putting up to sale the property as that of his judgment-debtor, the respondent must be taken to have intended to cause bidders to believe that it was the debtor's property, so far as he had been able to ascertain, and that, at all events, it was not his own property. We hold, therefore, that he is now estopped from saying that it is his own in order to defeat the appellant's purchase. The lower Appellate Court's decree in Appeal Suit 237 of 1882 must be reversed and that of the Munsif restored, as far as it directs delivery of the land No. 2.

5. The appellant, however, had presented a cross appeal No. 288 of 1882, as regards costs and damages, and this question was not gone into by the District Court. The present respondent was the only respondent in that appeal and in this second appeal. We shall, therefore, remit the following issue for trial upon the evidence already recorded, the finding to be returned within one month from the receipt of this order. Ten days will be allowed for objections.

6. Issue: Is the first defendant responsible for any, and what, mesne profits and damages in respect of either of the lands sued for?

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