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Court : Chennai

Decided On : Aug-31-1891

Reported in : (1892)ILR15Mad54

Judge : Arthur J.H. Collins, Kt., C.J. and ;Shephard, J.

Appellant : Chinnan

Respondent : Ramachandra and ors.

Judgement :

1. The third issue has apparently been tried under a complete misapprehension of the law.
2. Assuming that the person, who executed the mortgage in the plaintiff's favour, was the owner of the property, the only question is whether in fact he did mortgage it to the plaintiff. That is the only real question. It is found by the Subordinate Judge that the sums stated in the mortgage document to have been advanced on the security of it have not really been advanced, and on that finding apparently the Subordinate Judge arrives at the conclusion that the plaintiff's mortgage is 'not a bond fide one' and that he has no right to claim redemption. The expression 'bond fide mortgage' is a very loose and indefinite one, and it is not clear what the Subordinate Judge means. Prima facie when the execution of a mortgage or other conveyance is proved--and here apparently it was proved and not denied by the mortgagee--further evidence is not required to show that the purchaser has taken

the interest which the document purports to convey. It is not necessary for him to prove as against a third person that the consideration passed, and proof that the consideration mentioned did not pass is of no avail to show that the interest which the instrument purported to convey was not conveyed to the purchaser. Such proof is only important, when taken with other circumstances, it tends to show that the instrument was a mere sham not intended to convey any interest to the ostensible purchaser at all.

3. In the present case, if the plaintiff's mortgagor is content that the plaintiff should redeem, the defendants can have no reason to object; but for that reason the mortgagor ought, as Section 91 of the Transfer of Property Act requires, to be brought on the record.

4. We must ask the Subordinate Judge, after first adding the mortgagor or his representative as a defendant, to return a revised finding on the third issue, and, if he finds in favour of the plaintiff on that issue, to return findings on the other question raised in the appeal.

5. Findings to be returned within a month after the re-opening of the Subordinate Court, and seven days, after the posting of the finding in this Court, will be allowed for filing objections.

6. [The Subordinate Judge, in compliance with the above order, returned a revised finding which was to the effect that the mortgage deed sued on was executed for the benefit of one Vellian Chetty and not for that of the plaintiff who had paid nothing for it. He observed that the plaintiff's case was not that he had obtained the mortgage benami for Vellian Chetty (who was his cousin), but that he had taken it for his own benefit.]

7. The second appeal having come on for final hearing, the Court delivered judgment as follows:

8. It is now found that, as far as the plaintiff is concerned, it was not intended that he should take any interest under Exhibit A. We must accept the finding observing, however, that the observations of the Subordinate Judge are very confused.

9. The appeal is dismissed with costs.

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