

Rajaram Vs. Krishnasami and anr.

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Court : Chennai

Decided On : Oct-03-1892

Reported in : (1893)ILR16Mad301

Judge : Muttusami Ayyar and ;Wilkinson, JJ.

Appellant : Rajaram

Respondent : Krishnasami and anr.

Judgement :

1. The only question for determination is whether the defendant No. 3 took with notice of the plaintiff's right of pre-emption and of the necessity of his consent. The partition-deed was the first defendant's deed of title. By the partition he obtained a right to the specific portion of the house which he conveyed to the defendant No. 3. As remarked by jessel, Master of the Rolls, in Patman v. Harland L.R. 17 Ch. D. 353 constructive notice of a deed is constructive notice of its contents, provided that the deed is a deed relating to the title and forming part of the chain of title. Jones v. Smith I Hare, 43, which is relied on by the respondent, was referred to and it was held that that class of cases has no bearing at all on a case where the vendee knows that the deed of which he has notice is a deed affecting the land, and the question as to the extent to which it does affect the land can be ascertained only by looking at the deed itself. The third defendant's attention was drawn by the sale-deed to the deed of partition, and his omission to ascertain its contents must, with reference to the principle indicated in the remarks of the

Master of the Rolls in the above case, be construed as wilful abstention from an inquiry which he ought to have made.

2. With reference to the question of tender, we observe that the plaintiff expressed his readiness to pay the price fixed by the Court and that he offered to pay the Rs. 130 paid by third defendant to first defendant. We cannot, therefore, concur with the opinion of the Subordinate Judge that the absence of tender deprived appellant of his right of pre-emption.

3. As for the contention of the respondents' pleader that the Subordinate Judge recorded no finding on the first issue, we observe that this point was not pressed upon him, although it was taken in the memorandum of appeal. Both Courts found that the covenant was beneficial to both parties, and we cannot, therefore, allow the contention that the covenant was not binding on first defendant because concluded by his guardian. We cannot adopt the suggestion that the covenant is binding only on the guardian, and it is clearly not in contravention of the rule against perpetuity.

4. The decree of the lower Appellate Court is reversed and that of the District Munsif restored with costs in this and the lower Appellate Court.

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