

Hafizullah Vs. Nani Bibee on Her Own Behalf and on Behalf of Her Minor Sons

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Court : Kolkata

Decided On : Sep-02-1884

Reported in : (1884)ILR10Cal1073

Judge : Richard Garth, C.J. and ;Beverley, J.

Appellant : Hafizullah

Respondent : Nani Bibee on Her Own Behalf and on Behalf of Her Minor Sons

Judgement :

Richard Garth, C.J. and Beverley, J.

1. We think that the Courts below have not properly appreciated the point upon which this case depends.

2. It seems to have been virtually admitted that the person under whom the plaintiff claims was the heir of Ashruff; and, therefore, the question between the parties is the same as if Ashruff had lived, and had made a second conveyance of the property to the plaintiff; so that the point is, whether the defendant's unregistered deed, coupled with possession, is to prevail over the plaintiff's registered deed, which was executed six years after the defendant's.

3. The Subordinate Judge seems to have rather misunderstood what was decided in the Full Bench case of *Narain Chunder Chuckerbutty v. Dataram Roy* I.L.R. 8 Cal. 597.

4. The question there was, whether the mere fact of possession having been taken by the purchaser under an unregistered deed was sufficient of itself to establish a good title to the property as against a subsequent registered purchaser.

5. It had been thought by some members of this Court, that, under such circumstances, the party claiming under the unregistered deed had the preferable right see *Dinonath Ghose v. Auluck Moni Dabee* I.L.R. 7 Cal. 753. But the Full Bench held otherwise.

6. It had long been considered by this Court, and also by the Bombay High Court, that where a registered purchaser had notice that his vendor had previously conveyed away the property to some third person by an unregistered conveyance, it was contrary to equity and good conscience that his title (though under the registered deed) should be allowed to prevail. And this was also the law in England, where the language of the Registration Acts is much the same as in this country.

7. But then came the further question, whether the fact of the unregistered purchaser having taken possession, was conclusive evidence of notice; and the Full Bench decided that it was not.

8. But, at the same time, we all considered that such possession was in the great majority of cases very cogent evidence of notice; because every man, when he buys a property, is *prima facie* supposed to go and look at it, or make some enquiries about it; and if, when he makes such enquiries, he finds that somebody else is in possession, he ought to enquire how he came there; and if he finds that he is in possession under a conveyance from the owner, though the conveyance is unregistered, he is not justified in equity and good conscience in buying the property himself. If he chooses to buy under such circumstances, he runs the risk of losing his money.

9. Now this seems not to have been understood by the Subordinate Judge. He appears to have thought that it was not necessary to enter upon the question of notice, and he very truly says, that no evidence was given upon that question in the first Court. The truth is, that when the case came before the first Court, the Full Bench case had not been decided, and it is very possible that neither party understood the point upon which the case should depend.

10. We think justice requires that the case should be sent back to the first Court, in order that the question of notice should be properly raised and tried.

11. The question will be, whether, at the time when the plaintiff purchased in 1287 he was aware, or ought to have been aware (within the meaning of the authorities) that the defendant was in possession of the property and had purchased under the unregistered deed

12. Each party will be at liberty to give fresh evidence on this point, and the costs will abide the result.

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