

Jakhu Roy Vs. Bhalu Roy and ors.

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Court : Kolkata

Decided On : Jun-19-1885

Reported in : (1885)ILR11Cal667

Judge : Prinsep and ;Grant, JJ.

Appellant : Jakhu Roy

Respondent : Bhalu Roy and ors.

Judgement :

Prinsep and Grant, JJ.

1. In execution of a decree obtained by a mortgagee, the plaintiff intervened stating that he was in possession of the mortgaged property by virtue of a registered deed of sale executed by the mortgagor, and that he was entitled to priority as against the previous unregistered mortgage held by the decree-holder. His claim has been disallowed, and accordingly the present suit has been brought.

2. It cannot be disputed that at the time the plaintiff purchased from the mortgagor, he had notice of the previously existing mortgage under an unregistered deed, because some eight years previously the plaintiff unsuccessfully sued to have this very mortgage set aside on the ground that it was a forged deed. No doubt, the terms of the Registration Act declare that a duly registered deed relating to immoveable property, and not of certain excepted kinds, shall take effect as

regards the property comprised therein against every unregistered document relating to the same property and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not. Now, the mortgage in the present case, though unregistered, was a perfectly valid deed, as registration was not compulsory. The question, therefore, remains whether we are bound to interpret the terms of Section 50 of the Registration Act strictly, even though, by doing so, we shall be enabling the holder of the registered document to perpetrate a fraud as against a person who, under ordinary circumstances, would hold a perfectly valid title. The same question has been considered and determined by the Courts in England and Ireland with regard to Registration Acts, the terms of which are as stringent as those of Act III of 1877, Section 50. In *Wyatt v. Barwell* 19 Ves. 439 the Master of the Bolls expressed himself thus: 'It has been much doubted whether Courts ought ever to have suffered the question of notice to be agitated as against a party who has duly registered his conveyance; but they have said, 'We cannot permit fraud to prevail, and it shall only be in cases where the notice is so clearly proved as to make it fraudulent in the purchaser to take and register a conveyance in prejudice to the known title of another, that we shall suffer the registered deed to be affected," and this principle has been recognised in many other cases see *Tudor's Leading Cases* vol. II p. 48. We are accordingly of opinion that plaintiff purchased subject to the unregistered mortgage held by the defendant of which he had notice, and that therefore the present suit to declare his absolute title must be dismissed. The judgment of the lower Appellate Court is set aside, and that of the first Court restored. The defendant will be entitled to costs in this and the lower Appellate Court.