

APPEAL FROM ORIGINAL CIVIL.

Before Rankin C. J. and Buckland J.

NILMANI ADDY

v.

DINENDRANATH DAS.*

1929

Nov. 27.

Title—Abstract—Perfect title—Perfect abstract, requisites of—Material facts, omission of—Devolution—Documents—Objections—Limitation, computation of—Enquiry.

A perfect abstract of title should contain with sufficient fullness the effect of every instrument which constitutes the title of the vendor and it should contain further a statement of all the facts necessary to deduce a title in the vendor.

The facts upon which title depends, e.g., the death of a father, where the title has to be shown to have devolved upon the son, are important parts of an abstract of title. No abstract would be even reasonably complete, if it left out facts of that character, upon which devolution of title depends. It would be idle to abstract a document showing a transfer by A, if facts are not recited showing that the property had vested in him.

Where the abstract alleged none of the facts upon which the vendor relied for the purpose of showing that the property of P became the property of B,

held that, on the face of it, that abstract was imperfect.

The effect of the case law is that the time, within which the purchaser would be barred under such a stipulation as this (*viz.*, seven days from the date of delivery of the abstract), dates from the delivery of a perfect abstract (in the sense described)—not an abstract necessarily, which shows a perfect title (which is an entirely different thing), but an abstract, which sufficiently shows all the documents and gives all the facts upon which such a title, as the vendor is professing, is based.

Hobson v. Bell (1), *Blacklow v. Laws* (2), *Want v. Stallibrass* (3) and *Pryce-Jones v. Williams* (4) referred to.

APPEAL by the auction-purchaser from a judgment of Panckridge J.

The facts of the case, out of which this appeal arose, appear fully in the judgment of Mr. Justice Panckridge, which was as follows:—

This is an application on behalf of one Raghunath Addy, who has been declared a purchaser at an auction sale of a mortgaged property, No. 25,

*Appeal from Original Civil, No. 79 of 1929, in Suit No. 2588 of 1925.

(1) (1839) 2 Beav. 17; 48 E. R. 1084. (3) (1873) L. R. 8 Ex. 175.

(2) (1842) 2 Hare 40; 67 E. R. 17. (4) [1902] 2 Ch. 517.

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Mirzapur Street. The applicant asks for an order that an enquiry may be made, under the provisions of Chapter XXVII, rule 35, of the Rules of this Court, whether a good title can be made out to the premises and reliefs subsidiary thereto. Now it appears that the objection, which he has to the title, arises from an allegation that there exists a will, by which the property passed to the mortgagor's wife and from her to the mortgagor's sons, in which case the mortgagor had not at any time any title to the property. Mr. S. C. Bose has pointed out serious improbabilities in the claim in respect of which Mr. Basu's clients are apprehensive. Whether the claim be true or not, it appears that the claimants are people, who are prone to put forward different stories at different times to suit their own purpose, but the claimants are not before me, and in any event I should need overwhelming evidence that the so-called claim was baseless before I should on the merits not give Mr. Basu's client the enquiry which he asks for; but I consider I am precluded from doing so by reason of the conditions, under which the Registrar's sale took place. The relevant conditions are as follows:— By condition 6 "An abstract of title is to be delivered by the party having "the carriage of the proceedings and within seven days after actual "delivery of the abstract the purchaser has to deliver to the plaintiff's attorney "a statement in writing of his objections and requisitions (if any) to or on the "title as deduced by such abstract, and to and in respect of the description "of the property, and upon the expiration of such last mentioned time (and "in this respect time is to be deemed of the essence of the contract) "the title shall be considered as approved of and accepted by the purchaser "subject only to such objections and requisitions, if any." Now the abstract of title was delivered on the 19th March, 1929, and it is common ground that no such objection or requisition, as is contemplated by the condition which I have read, was made. Therefore, if the objection, which is now taken, falls within the condition, clearly the applicant is out of court, for he must be considered to have accepted the title. It seems to me, in the circumstances of this case, that the objection does fall within the condition I have read.

In the petition (paragraph 5) it is stated that from the abstract of title the following facts appear, that by a document of December, 1923, the plaintiff's mother purchased the property for Rs. 8,000. Other facts appearing from the abstract are a mortgage of other properties effected by the defendant in his capacity as trustee and also a deposit of the document of December, 1923, by the defendant with intent to create an equitable charge. So, what it comes to is this, that, apart from the deposit, the only material thing, that the abstract of title shows, is the conveyance in favour of the defendant's mother in 1893. It seems to me that an obvious requisition, arising out of the abstract, was whether the plaintiff's mother was alive or dead; if dead, whether she died testate or intestate, and if testate what were the provisions of the will, and whether it had been admitted to probate, and, if intestate, whether administration of the estate had been taken out. I myself do not understand why these requisitions were not made. They seem to be objections and requisitions to or on the title, as deduced by the abstract. But Mr. Basu seeks to construe the condition in another sense, by invoking condition No. 14, which stipulates that the purchaser shall not be entitled to any document except those that have been abstracted. Now it is not necessary for me to construe condition 14 further than to say that it certainly does not mean that the intending purchaser is not permitted to make enquiries or requisitions as to the existence of other documents or to ask for fuller information as to the state of things that the abstracted documents disclose.

In the circumstances, and I come to the conclusion with reluctance, it appears to me that the purchaser must, in the event, be deemed to have accepted the mortgagor's title to the property and I must dismiss this application with costs. Certified for counsel.

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Being aggrieved by this decision, the auction-purchaser preferred this appeal.

Mr. S. M. Basu and *Mr. N. C. Chatterji*, for the appellant.

Mr. S. C. Bose and *Mr. S. C. Ghose*, for the respondents.

RANKIN C. J. In this case, the appellant is one Nilmani Addy—a person who purchased, at a sale held by the Registrar of this Court, under a final decree for sale, dated the 8th February, 1928, for the enforcement of an equitable mortgage by deposit. The mortgagor was one Bankubehari Dhar and the mortgagee was Dinendranath Das and the deed deposited was a conveyance, dated the 22nd December, 1893; and the deed was deposited with a view to create an equitable charge on the one-third share claimed to belong to Bankubehari Dhar—the mortgagor. The sale was held on the 15th March, 1929, and that sale was held under certain conditions of sale, of which the sixth is important for the present purpose. That condition required the party having the carriage of the proceedings to deliver to the purchaser an abstract of the title, subject to the stipulations contained in those conditions. It went on to provide as follows:—

The purchaser shall, within 7 days after the actual delivery of the abstract, deliver at the office of Mr. S. K. Dutt, the attorney of the plaintiff, at No. 2, Hastings Street, in the town of Calcutta, a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract, and to and in respect of the description of the property, and upon the expiration of such last mentioned time (and in this respect time is to be deemed of the essence of the contract), title shall be considered as approved of and accepted by the purchaser, subject only to such objections and requisitions, if any.

Now, the abstract, as to which I shall say something in a moment, was delivered on the 19th March, 1929, and that document was shortly as follows: The root

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of title was the instrument of the 22nd December, 1893, and that was a registered *kabâlâ*, whereby Sreemati Abhaykali Dasee and her husband, Digambar De, transferred the property in question to Sreemati Prasaddasi Dasee—wife of Brajanath Dhar. The next instrument abstracted is the equitable mortgage, which is being enforced in the present proceedings, namely, of the 2nd September, 1924. This is a letter from Bankubehari Dhar to the plaintiff, Dinendranath Das, depositing the deed of the 22nd December, 1893, which was in the name of Sreemati Prasaddasi Dasee—mother of Bankubehari Dhar—by way of further security for a loan of Rs. 5,000 on the mortgage of some of the trust properties of Premlal Mallik. On the same date, there was a letter from the mortgagor, Bankubehari Dhar, and one Sreemati Radharani Dasee to the plaintiff, stating that an order for sale made in a certain suit had been cancelled and that any claim on the property in respect thereof had come to nothing. The documents that are further contained in the abstract are the preliminary decree in this suit, the Registrar's report and the final decree.

Now, with reference to this abstract, two questions arise. One is whether it is a perfect abstract in the sense that it contains with sufficient fullness the effect of every instrument which constitutes the title of the vendor and in the sense that it contains further a statement of all the facts necessary to deduce a title in the vendor. That is the first question. Assuming that it is a perfect abstract, the second question arises, namely, whether the objections to the title, which we have now to consider, are objections which go to the root of the title and which show that the purchaser would be getting a bad title or are objections not discoverable on the face of the abstract. These two questions arise, because on the 11th April, 1929, the purchaser took an objection to the effect that the abstract contained nothing to show why the property of Sreemati Prasaddasi Dasee was supposed to have

come to the hands of Bankubehari Dhar. As a matter of fact, the purchaser inspected the documents mentioned in the abstract on the 20th March. A claim was sent in on behalf of Bankubehari's sons on the 11th April, 1929, to the effect that they inherited the property under their paternal grandmother's will, namely, the will of Sreemati Prasaddasi Dasee. Thereupon, the purchaser took out a summons before the learned Judge asking for an enquiry into the title and for certain other reliefs. The learned Judge has refused to order an enquiry into the title on the ground that, by virtue of clause (6) of the Conditions of Sale, the purchaser is precluded from making any of his present objections to the title.

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The first question is whether this is a perfect abstract. In my opinion, it is plainly imperfect. The facts, upon which title depends, such for example as the death of a father where the title has to be shown to have devolved upon the son, are important parts of an abstract of title. Nobody supposes that an abstract would be even reasonably complete, if it left out facts of that character upon which devolution of title depends. It would be idle to abstract a document, showing a transfer by A, if facts are not recited showing that the property had vested in him. In my judgment, this abstract, on the face of it, is imperfect by reason that it alleges none of the facts upon which the vendor relies for the purpose of showing that the property—*prima facie* the property of Prasaddasi Dasee—became the property of Bankubehari Dhar. But the abstract is not only defective in that respect. It appears that one of the letters of the 2nd September, 1924, is insufficiently abstracted and that the insufficiency is extremely important. It appears that the letter of deposit goes on to use words which show or at least suggest that, in 1924, the mortgagor, Banku, was professing to have been for twenty years in separate possession of his one-third share with a separate realisation of rents in respect thereof—a claim which points to his right

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in this property having been derived not from his mother, who was alive, but in some other way. Now, this portion of the letter, which purports to be abstracted, was most improperly left out. An abstract, which treats a letter in that way, departs by a very long distance from being a proper or even a fair abstract and, on that ground alone, I should be of opinion that this abstract does not sufficiently contain the contents even of the documents which it purports to give. It is quite true that the vendor in this case does not purport to make title through any will of Prasaddasi Dasee and it would be entirely a bad criticism of this abstract to say that it was bad because that will was not abstracted. The abstract is a hopeless one, because it fails to set forth the facts necessary to disclose the title which the vendor at the time was asserting and, in my judgment, it is not necessary, in point of law, to go further.

The case law—which has been cited to us is, I think, clear. We have been referred to the cases of *Hobson v. Bell* (1), *Blacklow v. Laws* (2), *Want v. Stallibrass* (3) and *Pryce-Jones v. Williams* (4). The effect of the case law, in my judgment, is that the time within which the purchaser would be barred, under such a stipulation as this, dates from the delivery of a perfect abstract in the sense which I have described—not an abstract necessarily which shows a perfect title (which is an entirely different thing) but an abstract which sufficiently shows all the documents and gives all the facts upon which such title as the vendor is professing, is based. Even, if in this case, it could be said that the absence of the facts as to the devolution of title to Bankubehari Dhar could be ignored, it is, to my mind, quite impossible that the purchaser should be held in a matter of this sort to be bound by the stipulation as to time when one finds that this abstract in dealing with the letter of the 2nd September, 1924, deliberately conceals a part of

(1) (1839) 2 Beav. 17; 48 E. R. 1084. (3) (1873) L. R. 8 Ex. 175.
 (2) (1842) 2 Hare 40; 67 E. R. 17. (4) [1902] 2 Ch. 517.

the document, which would call the purchaser's attention to the very question whether or not this mortgagor could make a title through his mother or whether such title, as he had, came to him in another way, *e.g.*, by devolution from his father or by mere adverse possession. It is quite out of the question that the purchaser should be bound by the stipulation as to time when the abstract does not even deserve the epithet of being candid as regards the document with which we are dealing.

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Assuming that these points could be got over, there would remain the further question whether, if this abstract could be treated as a perfect abstract, clause (6) of the Conditions of Sale would debar the purchaser from an enquiry into the title. It seems to me that, if the purchaser is asking for an enquiry into the title, when that enquiry has taken place, the Court will be in a better position to say whether the position here is that the vendor has got no title at all or whether the position is that the vendor has got a good title, which requires to be strengthened or supplemented in various ways. If it be true that there is no proper devolution of the title from the mother, then, of course, no title at all is shown and the cases seem to show that such a stipulation as this is not to be used to thrust upon the purchaser a property, to which there is no title at all. The case before Mr. Justice Joyce [*Pryce-Jones v. Williams* (1)] has been relied upon for the proposition that, unless the objection is as to the document, which is the "root of the title," the clause will prevent the purchaser from asserting his objection. I doubt extremely whether that is the correct distinction. The case itself was one in which the equitable title was clear, but, by reason of the absence of a formal assignment, the legal estate was technically in the Crown and the Court was satisfied that it could be got in.

(1) [1902] 2 Ch. 517.

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In these circumstances, I am of opinion that this appeal should be allowed with costs and that we should direct an enquiry into the title. Any further relief, that the purchaser may desire in the matter, he will obtain on the Original Side. We set aside the order of costs made by Mr. Justice Panckridge and the costs of both parties in the application before Mr. Justice Panckridge will be dealt with under Chapter XXVII of the Rules of this Court and will depend upon the result of the application.

BUCKLAND J. I agree.

Attorneys for the appellant: *G. C. Chunder & Co.*

Attorney for the respondent: *S. K. Dutt.*

Appeal allowed.

G. S.