

APPELLATE CIVIL.

Before Mr. Justice Pontifex and Mr. Justice Field.

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March 30. NAJIBULLA MULLA (DEFENDANT) v. NUSIR MISTRI (PLAINTIFF).*

Bond—Description of Property—General Words—Registration.

In consideration of a loan, A gave a bond, by which he covenanted "not to alienate the property of himself and his daughter or the rest of his own property, until the loan secured by the bond was paid." The bond was recorded under the Registration Act in the book numbered "four" required to be kept by the Act. A subsequently sold his immoveable property, and the conveyance was recorded in the book numbered "one," in which documents relating to immoveable property have to be recorded. In a suit by the bond-creditor against the purchaser seeking to establish a lien on A's immoveable property by virtue of the bond,—

Held, that the general words used in the bond were not sufficient to give a lien upon any specific property, and that the fact that the bond had been recorded in book "four" showed that it was not the intention of the parties that the immoveable property of the debtor should be charged.

Doss Money Dossie v. Jonmenjoy Mullick (1) followed.

Rajkumar Ramgopal Narayan Sing v. Ram Dutt Chowdhry (2) distinguished.

THE plaintiff in this case was a bond-creditor of one Kamaruddi Sheikh. The defendant, subsequently to the date of the bond, purchased certain property from Kamaruddi Sheikh. The plaintiff having obtained a money-decree against Kamaruddi Sheikh, instituted the present suit against the defendant in order to establish a lien on what he claimed to be his mortgage-bond against the land purchased by the defendant. The defendant denied that the plaintiff's bond gave him any lien whatever, and insisted that it was a mere money-bond, and that his purchase, therefore, was not affected by the bond.

Appeal from Appellate Decree, No. 2951 of 1879, against the decree of A. T. Maclean, Esq., Judge of the 24-Pargannas, dated the 22nd September 1879, affirming the decree of Baboo Jogesh Chunder Mittor, First Munsif of Alipore, dated the 30th December 1878.

(1) I. L. R., 3 Calc., 363.

(2) 5 B. L. R., 264.

The words of the bond were, "Kamaruddi Sheikh engaged not to alienate the property of himself and his daughter for which he was about to sue or the rest of his own property, until the loan secured by the bond was paid off." The plaintiff insisted that these words gave him a charge or a lien on the whole of Sheikh Kamaruddi's property, as also the property which he might recover in the suit referred to in the bond.

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Both the lower Courts decided in favor of the plaintiff, that, under these words in the bond, he had a lien on Sheikh Kamaruddi's property, and on the specific property which had been purchased by the defendant.

The defendant appealed to the High Court.

Baboo *Rash Behary Ghose* for the appellant.

Baboo *Gurudas Banerjee* for the respondent.

The judgment of the Court (PONTIFEX and FIELD, JJ.) was delivered by

PONTIFEX, J. (who, after stating the facts of the case as above, continued):—Before the District Judge two authorities were cited; one of them—*Doss Money Dossee v. Jonmenjoy Mullick* (1)—is an authority to show that general words like those used in this bond would be insufficient to give a creditor a lien upon any specific property. The other is a Full Bench case, *Rajkumar Ramgopal Narayan Sing v. Ram Dutt Chowdhry* (2), and is relied upon by the plaintiff to show that, in this particular case, there was sufficient mention of property in the bond to give him a lien. Now the construction that ought to be put upon documents of this nature is stated very plainly in Sugden on "Vendors and Purchasers," page 711, 14th edition. It is there laid down that it is a general rule, although it may not hold universally true, that "a covenant to convey and settle lands will not be a specific lien on the lands of the covenantor, but the covenantee will be a creditor by specialty." That accords with the decision in *Doss Money Dossee v. Jonmenjoy Mullick* (1), to which I have referred, and it also accords with common sense and reason.

(1) I. L. R., 3 Calc., 363.

(2) 5 B. L. R., 264.

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Even without these authorities, we should be of opinion that the words used in this bond are too vague and uncertain to pass any lien. In fact, no specific property whatever is mentioned by situation. In the case of *Rajkumar Ramgopal Narayan Sing v. Ram Dutt Chowdhry* (1), referred to, property situate in certain specific mouzas is mentioned, and therefore that case is distinguishable from the case now before us.

On the ground, therefore, that the word of this bond are too vague and general to give any specific lien, we think that the decisions of the Courts below should be reversed; and in addition to the authorities above referred to, we find it laid down in Macpherson's book on Mortgages, pages 64, that "the property intended to be mortgaged should be described, so that it may be readily recognized and identified, and so as to meet the requirements of the Registration Act."

Now we find from section 21 of the Registration Act, that "no non-testamentary document relating to immovable property shall be accepted for registration, unless it contains a description of such property sufficient to identify the same." We also find that this particular bond was recorded under the Registration Act in the book numbered "four" required to be kept by the Act; but by the provisions of the Registration Act, all documents which relate to immovable property, and which are not wills, are to be recorded in book "one," while in book "four" are to be entered documents which do not relate to immovable property. We think, therefore, that this bond having been entered in book "four," shows pretty plainly what the intention of the parties themselves was, when this instrument was registered. If they had supposed that it gave a lien upon specific immovable property, it would have been their duty to have it recorded in book "one," and unless it was recorded in book "one," there would be no protection for a purchaser buying from a bond-debtor, for no search of the indexes required to be kept by the Act would give him notice that land belonging to the bond-debtor had been hypothecated. Putting it at the highest, the parties before us stand in precisely the same position. Even if the plaintiff intended to obtain a lien on his debtor's land,

he would only be in the same position as the defendant, *viz.*, a purchaser for valuable consideration. But the defendant, being in this position, has taken the precaution to register his conveyance as a conveyance of immoveable property, whereas the plaintiff has only taken under a bond in these vague and uncertain words, and has failed to register it properly as a document relating to immoveable property.

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We think that the decision of the Courts below must be reversed, and this appeal decreed with costs.

Appeal allowed.

Before Mr. Justice Pontifex and Mr. Justice Field.

DOORGA NARAIN SEN (PLAINTIFF) v. BANEY MADHUB
 MOZOOMDAR (DEFENDANT).*

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 April 20.

*Constructive Notice—Principal and Agent—Fraud by Agent—Liability to
 Third Persons.*

When a person is proved to have had a knowledge of certain facts, or to have been in a position, the reasonable consequence of which knowledge or position would be, that he would have been led to make further enquiry, which would have disclosed a particular fact, the law fixes him with having himself had notice of that particular fact. There may be such wilful negligence in abstaining from enquiry into facts which would convey actual notice, as may properly be held to have the consequences of notice actually obtained. But if there is not actual notice, and no wilful or fraudulent turning away from an enquiry into, and consequent knowledge of, facts which the circumstances would suggest to a prudent mind, then the doctrine of constructive notice ought not to be applied.

Constructive notice may apply as against third persons from a neglect to call for deeds and documents of title; but not to the same extent where a Registration Act is in operation, as it would where no Registration Act prevails.

Agra Bank v. Barry (1) followed.

Appeal from Appellate Decree, No. 1631 of 1880, against the decree of J. P. Grant, Esq., Judge of Hooghly, dated the 28th of June 1880, reversing the decree of Baboo Sri Nath Roy, Subordinate Judge of that district, dated the 30th November 1878.

(1) L. R., 7 H. L., 135.