

1884  
 Gopi Nath  
 Chobey  
 v.  
 Dhugwat  
 Pershad.

malikana, and under this power vested in him by the Regulations, he decided that question in favor of Rowshun Ali and against Behari Lal. Therefore, it is clear that after that decision he was holding for the person whose right he had recognised; he having the right to decide that question under the Settlement Regulations.

Therefore, in this case, it must be held that from the year 1866 adverse possession, so far as adverse possession can be held of a right of this description, has been held by Gopi Nath Chobey, the appellant before us. If Article 181 is applicable, the claim would be equally barred, because the plaintiffs are bound to bring their suit within twelve years from the time when they were first refused the enjoyment of the right. It is quite clear that at least in the year 1866 they were first refused the enjoyment of that right, and therefore the plaintiffs were bound to bring their suit within twelve years from that date. For similar reasons, if Article 120 be applicable, the suit should have been brought within six years from the date of refusal. We are, therefore, of opinion that the suit must be dismissed, both upon the grounds of limitation and *res-judicata* under s. 13 of the Civil Procedure Code.

We reverse the decision of the lower Appellate Court and dismiss the plaintiffs' suit with costs in all the Courts.

*Appeal allowed.*

*Before Sir Richard Garth, Knight, Chief Justice and Mr. Justice Beverley.*

CHUNDER KANT ROY (DEFENDANT) APPELLANT v. KRISHNA  
 SUNDER ROY (PLAINTIFF) RESPONDENT.\*

1884  
 May 1.

*Specific Performance—Oral Agreement—Sale to third person in contravention of Agreement—Notice—Act XIV of 1882, ss. 261-262.*

Where a *bond fide* contract, whether oral or written, is made for the sale of property, and a third party afterwards buys the property with notice of the prior contract, the title of the party claiming under the prior contract prevails against the subsequent purchaser, although the latter's purchase may have been registered, and although he has obtained possession under his purchase.

\* Appeal from Appellate Decree No. 2733 of 1882, against the decree of G. G. Day, Esq., Officiating District Judge of Mymensingh, dated the 23rd of September 1882; affirming the decree of Baboo Debendra Nath Roy, Officiating Second Munsiff of Netrokona, dated 11th of August 1881.

THIS was a suit for specific performance of an oral agreement to sell certain property.

The plaintiff alleged that one Brojo Sundari Dasi, defendant No. 1, orally agreed to sell to him certain property for Rs. 112, and that he had paid her Rs. 28 as earnest money in connection with this contract. That he had tendered to defendant No. 1 the whole of the purchase money, and had asked for a conveyance of the property, but she had refused to sell to him, and had since sold this very property to defendant No. 3 (who was aware of the agreement entered into between plaintiff and defendant No. 1) under a registered deed of sale. Brojo Sundari Dasi, her husband, and the vendee of the property were all made defendants. The defendant No. 1 denied having entered into any agreement with the plaintiff for the sale of the property. Defendant No. 3 contended that he was a *bond fide* purchaser for value, and also denied the agreement between the plaintiff and defendant No. 1. The Munsiff found that the agreement had been entered into and the earnest money paid, and that defendant No. 3 had notice of the agreement between defendant No. 1 and the plaintiff, he therefore set aside the sale to defendant No. 3, and ordered the defendant No. 1 to execute a kobala in favor of the plaintiff, and in default that the decree should be taken to be the kobala. Defendant No. 3 appealed to the District Judge, who upheld the decision of the Munsiff, dismissing the appeal with costs.

Defendant No. 3 appealed to the High Court.

Baboo *Hari Mohun Chakravati* for the appellant.

Baboo *Girish Chunder Chowdhry* for the respondent.

Judgment of the High Court was delivered by

GARTH, C.J.—(BENBURY, J., concurring).—We think there is no ground for this appeal.

It is contended, that as this case does not come within s. 48 of the Registration Act (III of 1877), the Court has no right to enforce the agreement of the 20th. of February 1881 as against the defendant. It is said that, although the agreement was prior to the purchase by the defendant, still as the agreement was not accompanied by possession, the title under the defendant's registered deed ought to prevail.

1884

CHUNDER  
KANT ROY  
v.  
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But this argument entirely ignores the doctrine of notice. It is clear law, both in England and in this country, that where a *bona fide* contract, whether oral or written, is made for the sale of property, and another party afterwards buys the property with notice of the contract, the title of the party claiming under the contract prevails against the subsequent purchaser, although his purchase may have been registered, and although he has obtained possession under his purchase.

This has been decided by Mitter and Maclean, J.J., in the case of *Nemai Churn Dhalal v. Kokil Bag* (1) to which the provisions of s. 27 of the Specific Relief Act I of 1877 did not apply.

But the present case comes clearly within the purview of subsection (b) of s. 27 of that Act.

That section enacts,—“Except as otherwise provided by this chapter, specific performance of a contract may be enforced against—

(a) either party to the contract; or

(b) any other persons claiming under either party to a contract by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith, and without notice of the original contract.

This shows, that where a party has notice of a prior contract for sale, he cannot, by any purchase that he may subsequently make, override it.

We think, therefore, that the decision of the Court below is right, with the exception of the latter portion of the decretal order, which directs, that “if on the receipt of the above sum of Rs. 84 from the plaintiff, the defendant No. 1 do not execute the said *kobala*, this decree shall, to all intents and purposes, be deemed a *kobala* to the plaintiff for the property in dispute.”

The lower Courts had no right to make an order of this kind.

We, therefore, set aside that portion of the decree, and direct that in the event of the defendant No. 1 failing or refusing to comply with the decree, the Court shall proceed to exercise the powers which are given by s. 261 and 262 of the Code of Civil Procedure for the purpose of carrying out the conveyance.

The appeal is dismissed with costs.

*Appeal dismissed.*

(1) I. L. R., 6 Calc., 535; 7 C. L. R., 487.