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found that there has been one continuous execution, no ground has been shown to us upon which we can question his finding upon this matter, which is a matter of fact. The appeal must therefore be dismissed with costs.

Appeal dismissed.

Before Mr. Justice McDonell and Mr. Justice Field.

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February 19.

BAMASUNDARI DASSI (PLAINTIFF) v. KRISHNA CHANDRA DHUR
AND OTHERS (DEFENDANTS).*

*Registration Act, 1877, s. 50—Registered and Unregistered Documents—
Priority—Notice of prior sale.*

Quære.—Whether the case of a second registered purchaser with notice of a prior sale is an exception to the rule laid down in the Full Bench case of *Narain Chunder Chuckerbutty v. Dattaram Roy* (1). The Court held that it was not necessary to decide the point in the present case inasmuch as the facts of the case did not justify them in finding that the purchaser had such notice.

THE plaintiff purchased from Ram Coomar *alias* Shib Nath Sen, the fourth defendant, a 5-gunda share of taluk Mohun by a registered *kobala*, dated the 22nd Bhadro 1285 (6th September 1868), for a consideration of Rs. 100. The plaintiff thereafter applied under Bengal Act VII of 1876 for registration of his name in respect of the above share, but was opposed by the first, second and third defendants, who alleged that they had purchased the same property (among others) from the fourth defendant by an unregistered *kobala*, dated 4th Srabun 1276 (16th July 1869), and claimed to have their names registered in respect of the 5-gunda share. The Collector accordingly rejected the plaintiff's application for registration of her name, and registered the share in the names of the first, second and third defendants, who, as the plaintiff alleged, had, in collusion with the fourth defendant, opposed her in entering in possession of the disputed share.

* Appeal from Appellate Decree No. 1208 of 1882, against the decree of T. M. Kirkwood, Esq., Judge of Mymensingh, dated the 24th of April 1882, affirming the decree of Baboo Bepin Chandra Roy, Additional Munsiff of Natrokon, dated the 4th of April 1881.

(1) I. L. R., 8 Calc., 597.

The plaintiff therefore brought this suit to set aside the defendants' *kobala*, for possession, and for registration of her name after reversal of the Collector's order registering the names of the defendants. The plaintiff alleged that the fourth defendant was a minor at the time of the alleged sale to the other defendants, and that the sale was therefore invalid; and that this *kobala* being unregistered could not have any effect as against her's which was registered.

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The defendants alleged that the price of the land covered by their deed was less than Rs. 100, and therefore there was no necessity for registering it; that the fourth defendant was not a minor at the time of sale, but that he and his mother had sold the property to pay the debts of the fourth defendant's father, one Sumbho Nath Sircar.

The Munsiff found that the fourth defendant was a minor at the date of the sale to the defendants; but that the sale was valid, having been made by his mother as guardian of the fourth defendant, in order to pay his father's debts. He also came to the conclusion that the plaintiff had purchased with notice of the defendants' purchase and possession, and that the defendants having been in possession under their purchase, and ever since the date of it, the plaintiff's deed of sale, though registered, could not prevail against the defendants' unregistered deed.

The Judge on appeal held that the sale by the fourth defendant to the other defendants was valid, although he was a minor at the time, inasmuch as it was not void because so made, but only voidable, and his subsequent conduct on obtaining majority had ratified it, and that from the possession by the defendants it was to be presumed that the plaintiff had notice of their purchase.

He therefore dismissed the appeal. The plaintiff appealed to the High Court.

Baboo *Jogesh Chunder Roy* for the appellant.

Baboo *Hari Mohun Chakravati* for the respondents.

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

FIELD, J.—In this case the plaintiff is purchaser under a

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registered conveyance from defendant No. 4. Defendants 1, 2 and 3 are purchasers under an unregistered conveyance from the same person. The Judge in the Court below has decided that the title of defendants 1, 2 and 3 ought to prevail against that of the plaintiff. The Judge says in his judgment: "The Munsiff is wrong in finding, that now since the Act of 1877, registered documents of which the registration is compulsory, have no priority over unregistered documents executed before 1877, of which the registration was optional. Under the present Act no document executed after the passing of the Registration Act of 1864, if unregistered, and the registration was optional, can take effect against a later registered document. But the purchaser under the later registered document cannot prevail against the former unregistered purchaser, if it is shown (1st) that the earlier bill of sale was a legal conveyance, and (2nd) that it was accompanied by delivery of possession). Such delivery of possession divests the vendor of all title and retention of possession by a prior purchaser over a long period, and makes it proper to presume that the second purchaser had notice."* This must be taken to be an incorrect statement of the law since the decision of the Full Bench in the case of *Narain Chunder Chuckerbutty v. Daturam Roy* (1). The Judge then proceeds: "In this case undoubtedly possession was in 1276 (1869) transferred to the first purchasers, defendants Nos. 1, 2, 3, who continued in peaceable and evident possession for nine years prior to the second sale, and for eleven years prior to the bringing of this suit. The plaintiff is a relative of defendant No. 4, and lives in a *bari* adjoining his; she is a woman, but a married woman, and her husband is a clerk in this office, and a man of some degree of education and intelligence; clearly then it must be presumed that plaintiff had notice of the former sale." The Judge accordingly bases his judgment on the ground that the registered purchaser had notice. This raises the question whether the case of a second registered purchaser having notice of a prior unregistered sale is an exception to the rule laid down in the Full Bench case—*Narain Chunder Chuckerbutty v. Daturam Roy* (1). This is

* Sic. in original.

(1) I. L. R. 8 Calc., 597.

a point which can scarcely be said to have been settled by the decisions of this Court. In the case of *Fuzluddin Khan v. Fakir Mahomed Khan* (1) the Chief Justice says (p. 342): "If, indeed, it could be shown that the subsequent purchaser under the registered instrument had notice of the conveyance by the prior unregistered deed, then the equitable doctrine which obtains in like cases in England, and which is explained in the case of *Le Neve v. Le Neve* (2) might prevent the registered purchaser from asserting his rights against the unregistered under s. 50." Clearly in this passage the learned Chief Justice does not decide the point. In the judgment of Mr. Justice Pontifex, at page 350, the question whether the plaintiff had sufficient notice was considered and decided in the negative. It may then be said that the question of notice was considered by one learned Judge to have arisen in that case. In the case of *Dino Nath Ghose v. Aluck Moni Dabee* (3) Mr. Justice Prinsep bases his decision upon the fact that the second and registered purchaser presumably had notice of the title of the first purchase. My judgment in that case proceeded upon other grounds. In the Full Bench decision in *Narain Chunder Chuckerbutty v. Dataram Roy* (4) Mr. Justice Pontifex adverts to the question of notice, but inasmuch as the question of notice or no notice did not directly arise in that case, any observation made upon this point must be regarded as an "*Obiter dictum*." We observe that the Madras High Court in two cases—*Nallappa Goundan v. Ibram Sahib* (5) and *Kondayya v. Guruvappa* (6)—have decided that the question of notice is immaterial, regard being had to the express provisions of the Registration Act. Now, if we had to decide the question whether the case of a second registered purchaser having notice is an exception to the law laid down in the Full Bench case, we might, perhaps, think it right under the circumstances to refer this question to a Full Bench, but we think that in the present case the question does not really arise. The Judge says in his judgment: "The plaintiff is a relative

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(1) I. L. R., 5 Calo., 336.

(2) 3 Atk., 646; 2 Wh. & Tudor L. C., 34.

(3) I. L. R. 7 Calo., 763.

(5) I. L. R. 5 Mad., 73.

(4) I. L. R., 8 Calo., 597.

(6) I. L. R., 5 Mad., 139.

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of defendant No. 4, and lives in a *bari* adjoining his; she is a woman, but a married woman, and her husband is a clerk in this office, and a man of some degree of education and intelligence. Clearly then it must be presumed that plaintiff had notice of the former sale." We think that no such presumption arises upon the facts stated. There is some evidence that the plaintiff is related to defendant No. 4, although what degree of relationship does not appear; but admittedly there is no evidence on the record that the plaintiff lives in a *bari* adjoining that of defendant No. 4. In the case of *Fuzhuddin Khan v. Fakir Mahomed Khan*, already referred to, Pontifex, J., says: "According to the English decisions, the notice of fraud must be very clearly proved," and then he refers to the case of *Wyatt v. Barwell* (1), the judgment in which contains the following passage: "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 will suffer the registered deed to be affected." Applying this principle to the present case, we think that the decision of the Judge, in the Court below, is erroneous—first, because there is no clear proof of notice, and second because he has raised a presumption upon facts which do not support the presumption raised. This being so, the question whether the case of a second registered purchaser having notice is an exception to the general rule laid down by the Full Bench case, does not arise; and it is unnecessary to decide it on the present occasion. We must set aside the decree of the lower Appellate Court and decree this appeal with costs of all Courts."

Appeal allowed.

(1) 19 Ves., 435.