

1887
July 9.

Before Mr. Justice Mahmood.

KALKA PRASAD (PLAINTIFF) v. CHANDAN SINGH AND OTHERS
(DEFENDANTS).*

Hypothecation—Registration—“Moveable Property”—Act I of 1868 (General Clauses Act), s. 2 (c)—Act III of 1877 (Registration Act), ss. 2, 17—Act IV of 1882 (Transfer of Property Act), ss. 3, 54—Small Cause Court suit—Suit for enforcement of hypothecation against moveable property—Act XI of 1865 (Small Cause Courts Act), s. 6—Transfer of debt—Act IV of 1882, s. 131—Notice to debtor.

Held that an assignment by endorsement of a registered bond hypothecating certain crops was a transaction relating to moveable property, and registration of such endorsement was not required by s. 17 of the Registration Act (III of 1877) or s. 54 of the Transfer of Property Act (IV of 1882); and that a suit by the assignee to enforce the hypothecation was not a Small Cause Court suit within the meaning of s. 6 of Act XI of 1865, in which a second appeal would be barred by s. 586 of the Civil Procedure Code. *Surajpal Singh v. Jairamgir* (1) followed. *Ram Gopal Shah v. Ram Gopal Sesh* (2) and *Appavu Pillai v. Subraya Muppen* (3) referred to.

Held also that the assignment was not void by reason that notice thereof was not proved to have been given to the obligor, inasmuch as the effect of s. 131 of the Transfer of Property Act was merely to suspend the operation of the assignment up to the time when such notice was received; that in this case the assignment would come into operation against the obligor when he became aware of it by the institution of the suit; and that if he had prior notice, and sold the property to *bona-fide* transferees for value without notice either of the charge created by the bond or of the assignment, such transferees would be protected from liability. *Lala Jugdeo Sahai v. Brij Behari Lal* (4) referred to.

THE facts of this case were as follows:—Chandan Singh, defendant No. 1, executed a deed in lieu of Rs. 100 in favour of Muhammad Husain Khan, defendant No. 2, on the 17th July, 1885, and as collateral security hypothecated certain property described in the deed as “*Khut-naiishakar*” (literally, “a field of sugar cane”). The deed was duly registered, and subsequently, on the 13th October, 1885, the obligee of the bond, Muhammad Husain Khan, defendant No. 2, made an endorsement on the deed purporting to sell or assign the bond to Kalka Prasad, the plaintiff-appellant in this case. The endorsement was, however, neither stamped nor registered.

* Second Appeal, No. 1429 of 1886, from a decree of Maulvi Mirza Abid Ali Khan, Subordinate Judge of Shahjahanpur, dated the 30th June, 1886, confirming a decree of Maulvi Muhammad Shah, Munsif of Shahjahanpur, dated the 8th April, 1886.

(1) I. L. R., 7 All. 855.

(2) 9 W. R., 136.

(3) 2 Mad. H. C. Rep., 474.

(4) I. L. R., 12 Calc. 505.

In the meantime Chandan Singh cut down the crops of sugar-cane and sold the same to Mendu Khan, defendant No. 3, and Imam Ali, defendant No. 4.

The present suit was commenced by the plaintiff on the 2nd March, 1886, having for its object the recovery of the money due upon the bond of the 17th July, 1885, either from Chandan Singh, defendant No. 1, or his vendees, defendants Nos. 3 and 4, who had purchased the sugar cane. The suit was met by the plea that the endorsement of the 13th October, 1885, being unregistered, could not have transferred the bond to the plaintiff, and this view having been accepted by the Court of first instance (Munsif of Sháhjahánpur), the suit was dismissed by that Court without going into the evidence. That Court regarded the bond of the 17th July, 1885 as one hypothecating immoveable property, and, as such, requiring registration under s. 17 of the Registration Act (III of 1877), the absence of such registration vitiating the sale itself under s. 54 of the Transfer of Property Act (IV of 1882). On appeal, the lower appellate Court (District Judge of Sháhjahánpur) not only upheld this view, but held that the sale was in itself invalid by reason of the fact that the obligee of the bond of the 17th July, 1885, Muhammad Husain, in transferring it to the plaintiff, Kalka Prasad, never gave notice to the obligor Chandan Singh, and that therefore the transfer was bad with reference to the provisions of s. 131 of the Transfer of Property Act.

The plaintiff appealed to the High Court. The further facts of the case, and the arguments on both sides, sufficiently appear from the judgment of the Court.

Pandit *Sundar Lal*, for the appellant.

Lala *Lalta Prasad*, for the respondents.

MAHMOOD, J. (after stating the facts as above, continued):—
Pandit *Sundar Lal*, in supporting this second appeal, has contended in an able argument that the judgments of both the lower Courts are erroneous, because, in the first place, what was hypothecated in the bond of the 17th July, 1885, was not the land, but only the sugar cane crop of the field, and the hypothecation therefore related only to moveable property within the meaning of cl. (6) of s. 2 of the General Clauses Act (I of 1868), and s. 3 of the Registratio

1887

KALKA
PRASAD
v.CHANDAN
SINGH.

1887

KALKA
PRASAD
v.
CHANDAN
SINGH.

Act (III of 1877), and s. 2 of the Transfer of Property Act (IV of 1882), and that therefore no registration of the document was required either by s. 17 of the Registration Act, or s. 54 of the Transfer of Property Act, so far as the endorsement of the 13th October, 1885, transferring the bond to the plaintiff, was concerned.

Before proceeding further, I may at once say that no question arises as to the absence of stamp upon that endorsement, because a penalty thereon has already been taken under s. 34 of the Stamp Act, and the validity of such penalty cannot be questioned in appeal at this stage under the same section.

A preliminary objection has been taken by Mr. *Lalta Prasad*, on behalf of the respondents, to the hearing of this appeal, upon the ground that even if the appellant's contention in this Court be valid, and the property hypothecated in the bond now sued upon be taken to be only the crops, and, as such, moveable property, no such suit can be made the subject of second appeal, as it is of the nature of a Small Cause Court suit within the meaning of s. 586 of the Civil Procedure Code; and, in support of this contention, the learned pleader relies upon a ruling of the Madras High Court in *Appuru Pillai v. Subraya Muppen* (1), where Scotland, C. J., and Holloway, J., said:—"There is nothing, in our opinion, in the Small Cause Courts Act to prevent the pledgee enforcing his security on moveable property. The Court, having jurisdiction in a suit for the recovery of such property, has clearly jurisdiction to enforce a contract pledging such property." On the other hand, Pandit *Sundar Lal* contends that the suit is not of the nature of the Small Cause Court suit contemplated by s. 3 of Act XI of 1865, and in support of this view he cites the case of *Ram Gopal Shah v. Ram Gopal Shah* (2), and also a recent ruling of this Court in *Surajpal Singh v. Jairamgir* (3), where my brethren Straight and Tyrrell concurred in holding that a suit which sought to recover a sum of money by enforcement of hypothecation of certain cattle by their attachment and sale was a suit not cognizable by the Small Cause Court, and, as such, could be made the subject of an appeal.

(1) 2 Mad. H. C. Rep., 474.

(2) 9 W. R., 136.

(3) I. L. R., 7 All. 855.

1887

 KALKA
 PRASAD
 v.
 CHANDAN
 SINGH.

In this state of authority, before I can consider the remaining part of the case, I have to determine first:—Whether the bond of the 17th July, 1885 hypothecated the sugar cane crops only or also the land; secondly—If the hypothecation related only to the crops, whether the present appeal is maintainable at all as a second appeal, within the meaning of s. 586 of the Civil Procedure Code, considering that the amount claimed is below Rs. 500.

Upon the first of these questions, I am of opinion, having read the original deed, that what was intended to be hypothecated was not the field itself, but only the crops of that field, and Pandit *Sundar Lal's* contention is sound that such crops are moveable property, and that the deed, therefore, did not require registration. It seems to me that in the expression "*khet-naishakar*," the word *khet*, which means field, was intended to indicate simply a measure such as in the expression "a pint of milk:" the pint is used simply as a measure, and not as a physical pint by which such measurement is made. "*Khet-naishakar*" means the particular field specified in the deed whereon the *naishakar* or sugar cane which was hypothecated under the bond was standing.

This conclusion is supported by the circumstance that Chandan Singh is only a tenant in the village, the present plaintiff is representing the zamindar in that same village, and the executant of the bond was not to be expected to be dealing with the field or hypothecating the land. This being so, the hypothecation was of moveable property and not of immoveable property.

As to the second question, I have already cited the somewhat conflicting rulings upon which the learned pleaders for the parties have relied, and without expressing any personal opinion of my own upon the particular question, I need only say that, sitting here as a single Judge, I do not think I should, without very strong reasons to the contrary, depart from a Division Bench ruling of this Court, such as that of my brothers Straight and Tyrrell, in *Surajpal Singh v. Jai Ramgir* (1), and I therefore follow it and hold that this was not a Small Cause Court suit within the meaning of s. 6 of Act XI of 1865, and that, therefore, this second appeal did lie to this Court, notwithstanding the provisions of s. 586 of the Civil Procedure Code.

(1) I. L. R., 7 All. 855.

1887

 KALKA
 PRASAD
 v.
 CHANDAN
 SINGH.

I now proceed to deal with the case itself, having taken cognizance of it in second appeal. In doing so I have to consider the provisions of Chapter VIII of the Transfer of Property Act (IV of 1882). I have already shown that the Court of first instance was wrong in dismissing the suit simply for want of registration of the endorsement of the 13th October, 1885, whereby the bond of the 17th July, 1885 was sold to the present plaintiff. The lower appellate Court's view virtually amounts to holding that the plaintiff, not having proved that he or his vendor gave notice of the transfer to the debtor Chandan, the transfer itself was void. This view seems to me to be erroneous in law. In the common law of England the assignee of a debt was in old days bound to sue in the name of his assignor, a procedure which was inconsistent with the fact of the transfer, and inconsistent also with the rules of equity applicable to such matters.

What the doctrines of equity required was that a debtor, when the obligation which he owed to his obligee had been transferred by the latter to another person, should be entitled to a notice of such transfer in order to be protected from having to pay the money in fulfilment of the obligation over again to the assignee, after having paid to the original assignor. That rule has found formulation in our statute law in s. 131 of the Transfer of Property Act, which says:—"No transfer of any debt or any beneficial interest in moveable property shall have any operation against the debtor or against the person in whom the property is vested, until express notice of the transfer is given to him, unless he is a party to, or otherwise aware of, such transfer, and every dealing by such debtor or person, not being a party to or otherwise aware of, and not having received express notice of a transfer, with the debt or property shall be valid as against such transfer."

This is the quintessence of what Courts of equity in England have repeatedly held, and the effect of this section is clear enough, and it would govern the transfer of the bond of the 17th July, 1885, under the endorsement of the 13th October, 1885, purporting to sell the same bond to the present plaintiff. It is necessary to bear in mind in the first place, that although this section expressly renders necessary the giving of express notice to the debtor, and although it suspends

the operation of such a transfer as against such a debtor up to the time when such notice is given to the debtor, it contains no provisions invalidating such transfer when no such notice is given. That is to say, in other words, there is nothing in this section which would justify the contention that the transfer is *ab initio* void for want of such notice as that section contemplates.

All that that section requires is that when an obligation is transferred by the obligee to another person, the obligor who has to fulfil such obligation is not to be subject to any liability thereunder at the instance of the transferee without such debtor having received notice of the transfer. As to the notice itself, the section does not limit that to "express notice," but to the broader doctrine of notice as understood in equity, because the words of the section are:—"unless he is a party to or otherwise aware of such transfer." The last phrase is broad enough to bring under the purview of the section all cases in which the knowledge of the transfer in an ascertainable form has reached the debtor. The latter part of the section is, of course, intended to protect a debtor who, without knowledge of the transfer of the obligation by the obligee to another person, fulfils the obligation, and is subsequently sued by the assignee of such an obligee as fraudulently accepts the fulfilment notwithstanding such assignment; and the same rule is also applied to persons other than the debtor himself, and those who, being *bond-fide* persons, acquire rights or any beneficial interest in moveable property in the absence of any kind of notice of the transfer of the debt by the original obligee to another person.

These views are applicable to the present case; because the mere absence of any express notice to Chandan on the one hand would not vitiate the endorsement of the 13th October, 1885, whereby the bond was sold to the present plaintiff, Kalka Prasad, although the operation of such transfer, as against Chandan, would be regulated in accordance with the time when the said Chandan obtained knowledge as to such transfer. Similarly, even if Chandan had notice of the transfer, and sold the moveable property subject to the plaintiff's bond to Mendu Khan, defendant No. 3, and Imam Ali, defendant No. 4, these two persons in the position of *bond-fide* transferees for value without notice either of the charge

1887

 KALKA
 PRASAD
 CHANDAN
 SINGH.

1887

 KALKA
 PRASAD
 v.
 CHANDAN
 SINGH.

which the bond of the 17th July, 1885 may have created upon the crops or of the transfer of that bond in favour of the plaintiff, would undoubtedly be protected from any liability arising out of the action of Chandan in selling the sugarcane to them under such circumstances.

But the pleadings of the parties in this case raised questions of fact which required determination before the case could have been finally disposed of. First of all it was pleaded by Chandan Singh, the original obligor^f of the bond of the 17th July, 1885, that he had paid up the amount due under the bond to the original obligee, Muhammad Husain, and that the transfer of the 13th October, 1885 was not a real but simply a colourable transaction in which no consideration passed, and that Kalka Prasad was not the real purchaser of the bond, and, as such, not entitled to maintain the action. There was no allegation as to any information having been given to Chandan Singh in respect of the alleged transfer, and the suit appears to have been brought without any kind of notice having been issued as required by s. 131 of the Transfer of Property Act.

The lower Courts, however, taking the erroneous view of law which they have done in the case, have not gone into the merits. The view of the lower appellate Court as to the absence of notice is itself based upon a misapprehension of the interpretation of s. 131 of the Transfer of Property Act. I have already said that that section does not vitiate the transfer of a debt, but that it only postpones its operation in accordance with the date of the knowledge of such transfer reaching the debtor. In a recent case, *Lala Jugdeo Sahai v. Brij Behari Lal* (1), a Division Bench of the Calcutta High Court had to consider the exact effect of that section, and the learned Judges there held, in conformity with the cases cited in White and Tudor's Leading Cases, 4th edition, Vol II, pp. 776-777, as notes to the leading case of *Ryall v. Rowles* that whilst notice is not a condition precedent to the validity of a transfer of a debt such as contemplated by s. 131 of the Transfer of Property Act, the section only fixes the time with reference to notice when such transfer would come into operation as against

(1) I. L. R. 12 Calc. 505.

the debtor. The case before the learned Judges was one where an assignee of a mortgagee brought a suit on the mortgage against the mortgagor and the mortgagee, and no notice of the assignment had been given to the mortgagor under s. 131 of the Transfer of Property Act. The learned Judges held that the Court was wrong in dismissing the suit merely on the ground that no notice was served, as after the suit was instituted the mortgagor became aware of the assignment, and the transfer accordingly came into operation on the date when he thus became aware of it. I agree in this view of the law, and I hold that in the present case the mere absence of an express notice having been served by the plaintiff would not render the action unmaintainable.

Under these circumstances, I hold that neither of the Courts below has tried the case upon the merits, and in my opinion the proper course is to decree this appeal, to set aside the decrees of both the lower Courts, and to remand the case for trial *de novo* on the merits, with reference to the observations which I have made. The remand will be under s. 562 of the Civil Procedure Code, and under the last part of that section I may point out that the Court should try, in the first place, whether the assignment of the 13th October, 1885 was a real and genuine assignment or not: and in the second place, whether Chandan Singh actually had paid the money due on the bond of the 17th July, 1885 to Muhammad Husain, either before such assignment or thereafter at a time when he had no notice of the assignment. Thirdly, whether the defendants Mendu Khan and Imam Ali, Nos. 3 and 4, had no notice either of the sugarcane crops being hypothecated under the bond of the 17th July, 1885, or of that bond having been transferred by Muhammad Husain to the present plaintiff, and whether their action in purchasing the crops was *bonâ fide* or not.

The costs will abide the result.

Issues remitted.

 1887

 KALKA
 PRASAD
 v.
 CHANDAN
 SINGH.