

1885

HARPAL  
SINGH

v.

BAL GOBIND.

independent of the wishes either of the zamindár or of his mortgagee in possession, and when a cultivator acquires such a right, it cannot be taken as in the nature of a grant from either of them.

The right of occupancy may thus be acquired during the currency of a usufructuary mortgage and during the period of the mortgagee's possession of the zamindari rights, and the zamindár upon redeeming the mortgage cannot disturb the possession of such occupancy-tenants on the ground that, when he mortgaged the zamindari, it was free of such occupancy-tenures. Such was the rule laid down by Turner, Offg. C. J., and Ross and Spankie, JJ., in *Heeroo v. Dhoree* (1), and agreeing in the view therein taken, I hold that it is applicable to the present case.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Mahmood.

SHEO DAYAL MAL AND ANOTHER (DEFENDANTS) v. HARI RAM AND ANOTHER (PLAINTIFFS).\*

*Registration, place of—Act VIII of 1871 (Registration Act), ss. 28, 85—“Whole or some portion of the property”—Bona fide transferee for value of mortgaged property—Notice—Ignorance of existing incumbrance.*

The terms of s. 28 of Act VIII of 1871 must not be construed in their literal sense, inasmuch as to do so would defeat the intention of the Legislature that registration should be made with reference to the locality of the property to which the document relates; and hence the words of the section “some portion of the property” must be read as meaning some *substantial* portion.

A bond which purported to mortgage 500 square yards of land situate at P, two entire villages and shares in fourteen villages in the G district, and a village in the C district, and which required registration under Act VIII of 1871, was registered at P.

*Held* that the bond was not properly registered in accordance with the provisions of s. 28 of Act VIII of 1871.

*Per* MAHMOOD, J.—The imperative direction of s. 28 of Act VIII of 1871 is addressed not to the registering officer, but to the person presenting a document to that officer for registration; and therefore s. 85, which refers only to defects in the appointment or procedure of the registering officer, could not cure the irregularity which was committed under s. 28.

*Held* that a statement in answer to interrogatories, which was made by the purchaser of mortgaged property, to the effect that, at the time of the purchase, he was aware of the mortgage and believed that it had been satisfied, was no

\* First Appeal No. 26 of 1882, from a decree of R. J. Leeds, Esq., District Judge of Gorakhpur, dated the 7th November, 1881.

(1) N. W. P. H. C. Rep., 1879, p. 129.

proof of the purchase having been made after notice of a prior mortgage, inasmuch as it was inconsistent with the knowledge of an *existing* incumbrance.

1885

SHEO DAYAL  
MAL  
v.  
HARI RAM.

THE suit to which this appeal related was one for the recovery of Rs. 79,655 principal and interest due on a bond dated the 20th May, 1873, and for the sale of the property mortgaged therein. It was instituted in the Gorakhpur district. This bond had been given to the plaintiffs by the defendant Brooke, and he had subsequently to its date transferred by sale to the other defendants, Sheo Dayal and Har Dayal, the property mortgaged by it to the plaintiffs. The bond purported to mortgage 500 square yards of land in Muhalla Mughalpura in the city of Patna, two entire villages and shares in fourteen villages in the Gorakhpur district, and a village in the Champaran district. The defendants Sheo Dayal and Har Dayal defended the suit upon the ground, amongst others, that the bond was not admissible in evidence, not having been registered in accordance with the provisions of s. 28 of Act IX of 1871, under which it had been registered, inasmuch as it had been registered at Patna, where the defendant Brooke had not any property at the time of registration, the recital in the bond as to the 500 square yards of land in Muhalla Mughalpura being false. With reference to this defence, the lower Court framed the following issue:—"Had Mr. Brooke any immovable property in Patna, the 500 yards of land in Muhalla Mughalpura to wit, so that the legality of the registration of the bond, dated the 20th May, 1873; is indisputable; and, if Mr. Brooke had not such land, is the registration of the deed in Patna valid or not, and the deed admissible in evidence?" Upon this issue, the lower Court found that the defendant was the owner of land in Patna at the time of the registration of the bond, and held that the registration of the bond at Patna was consequently in accordance with the provisions of s. 28 of Act VIII of 1871.

The first question raised by this appeal by the defendants Sheo Dayal and Har Dayal from the decree which the lower Court gave the plaintiffs was whether the registration of the bond at Patna was in accordance with law.

Mr. C. H. Hill, Mr. T. Conlan, and Babu Dwarka Nath Banarji, for the appellants.

1885

Pandit *Ajullia Nath*, *Lala Lalla Prasad*, and *Babu Baroda Prasad Ghose*, for the respondents.

For the appellants it was contended that the defendant Brooke possessed no property whatever at Patna at the time of registration of the bond; and further that, assuming that the defendant Brooke possessed at the time of registration of the bond the land at Patna which it purported to mortgage, the bond had not been registered in accordance with the provisions of s. 28 of Act IX of 1871, as the true intent and meaning of that section was that the instrument shall be registered in the district in which the substantial part of the property is situated, and, regard being had to the relative value and extent of such land, and of the mortgaged property situate in the Gorakhpur district, such land was not a "substantial" portion of the property to which the bond related.

For the respondents it was contended that the finding of the lower Court that the defendant Brooke possessed the land at Patna described in the bond was correct, that s. 28 must be construed as it stood, and the word "substantial" could not be interpolated; that the bond having been as a matter of fact registered must, there having been no fraud contemplated, be taken to have been duly registered, the registration of an instrument in the wrong district being a defect of the nature contemplated by s. 85, and not such a defect as would invalidate the registration. Reference was made to *Har Sahai v. Chummi Kuar* (1), *Bishunath Naik v. Kalliani Bai* (2), *Sah Mukham Lal Panday v. Sah Kundan Lal* (3), and *Muham-mad Ewaz v. Birj Lal* (4).

It was also contended, on the one side, that the respondents had purchased from the defendant Brooke with notice of the mortgage to the plaintiffs, and, on the other, that they had not purchased with such notice.

PETHERAM, C.J.—I think that this appeal must be allowed on the ground that the deed executed by Mr. Brooke, on the 20th May, 1873, was invalid as against subsequent purchasers by reason of not being properly registered. I take the facts which are necessary for the purposes of this judgment, to be

(1) L. L. R., 4 All. 14.

(2) Weekly Notes, 1882, p. 175.

(3) L. L. R., 1 All. 465, L. R., 4 Ind. Ap. 108.

(4) 15 B. L. R. 238; 24 W. R. 75; L.

R., 2 Ind. Ap. 210.

the following :—Mr. Brooke is the owner of valuable property at Gorakhpur and also at Champaran, each of which places is at a considerable distance from Patna, and he had also at Patna a property which is assumed to be worth about Rs. 500, but which was, in all probability, worth less than that amount, and which, at all events, bore a very small proportion to the whole property belonging to Mr. Brooke, and mortgaged by the deed of the 20th May, 1873. Under these circumstances, the bond in question was registered at Patna. Now, the first question which arises in this appeal is, whether it was sufficiently registered with reference to the provisions of s. 28 of Act VIII of 1871, which contained the registration law in force at the time when the bond was executed. That section provides that “every document mentioned in s. 18, clauses (1), (2), (3), and (4), and s. 17, clauses (1), (2), (3), and (4), shall be presented for registration in the office of a Sub-Registrar, within whose Sub-District the whole or some portion of the property to which such document relates is situate.” The document of the 20th May, 1873, comes under cl. (2) of s. 17, which makes compulsory the registration of “other instruments (not being wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of Rs. 100 or upwards, to or in immoveable property.” Now, here we have an instrument purporting to create a vested interest in immoveable property of greater value than Rs. 100, and therefore it required registration in the place referred to in s. 28, namely, the office of a Sub-Registrar, within whose Sub-District “the whole or some portion of the property to which” it related was situate. Now, since Mr. Brooke had about Rs. 500 worth of land at Patna, which was hypothecated in the bond, “some portion” of the property to which the bond related was undoubtedly situate in the place of registration. And, therefore, if the words of s. 28 are to be taken in their literal sense, the bond must be regarded as having been properly registered. But it seems to me that to take them literally would be to defeat the real object which the Legislature had in view when it enacted the section. That object was, that the registration of a document should have some reference to the locality of the property to which the document

1885

---

 SHEO DAYAL  
 MAL  
 v.  
 HARI RAM.

1885

SHEO DAYAL  
MAL  
v.  
HARI RAM.

relates. The section first speaks of the sub-district in which the *whole* of the property is situate. But in a case like the present in which there is a large and valuable property in one sub-district, and another small piece of land situate at a distance, it seems to me that to allow registration of a document affecting both properties in the place where the smaller and less valuable is situate, would be inconsistent with the implied intention of the Legislature, that registration should be made with reference to the locality of the property.

What, then, is the rule to be followed in cases where a literal interpretation of the terms of an enactment would defeat the intention with which the enactment was made? Mr. Wilberforce in his book on *Statute Law* (1881) has expressed the rule in clear language, and has collected the cases by which it has been established. He says (p. 131):—"It has often been laid down that while words are to be understood in their plain and ordinary sense, they must not be read so literally as to defeat the object of an enactment. Acting on this principle, the Courts have both in ancient and modern times given some words a wider meaning than they usually bear, and have restricted or modified the meaning of others." He cites cases which establish this principle, and in some of which the literal meaning has been enlarged, while in others it has been restricted by the Courts. In the case before us we must first consider whether the intention of the Legislature cannot be effected without either enlarging or restricting the meaning of the terms which it has used. For the reasons which I have already given, I do not think that this is possible.

If the words in s. 28 of Act VIII of 1871—"some portion of the property"—are construed to mean some *substantial* portion, then the obvious intention of the Legislature is effected, and registration is kept to the place where a man's property is known to be situate. Now, the property of Mr. Brooke at Patna cannot be regard as a substantial portion of the whole property hypothecated, and therefore I am of opinion that the deed must be considered invalid. Cases were cited to show that an insufficient registration may not absolutely invalidate a deed with reference to s. 49. It is probable that in those cases, the question of registra-

1885

---

 SHEO DATAL  
 MAL  
 v.  
 HARI RAM.

tion arose between the parties to the deed, and if the operation of s. 49 is confined to the case of persons subsequently taking the property, then the decisions referred to are not irreconcilable with the views which I am now expressing. Then comes the question whether the purchaser bought after the mortgage and with notice of it, in which case he would have no *locus standi*. The only evidence as to notice is in one of the defendant's answers to interrogatories, in which he stated that he was aware of the mortgage and believed that it had been satisfied. This statement is inconsistent with the knowledge of an *existing* encumbrance, and therefore is no proof of the purchase having been made after notice of a prior mortgage.

MAHMOOD, J.—I concur in the judgment delivered by the learned Chief Justice, but I wish shortly to express my own views as to the validity of the document upon which the suit is based. The construction placed upon the provisions of s. 28 of Act VIII of 1871 by the learned Chief Justice is, in my opinion, the only construction possible, and if the registration of the deed with which we are now concerned was not in accordance with those provisions so construed, it is undoubtedly invalid under the Registration Law. Much of the argument of the learned pleader for the respondents has turned on the analogy of the interpretation of s. 85 of the same Act, and also on two cases decided by their Lordships of the Privy Council—*Sah Mukhun Lal Panday v. Sah Kundan Lal* (1), and *Muhammad Ewaz v. Birj Lal* (2). I have carefully examined these cases, and some other authorities also, one being a decision of the Calcutta High Court, in which Broughton, J., gave a judgment which has been followed by this Court. I think that in this case we must distinguish between those matters which are of the essence of the Registration Law and those which are merely subsidiary to the object which the Legislature in making that law had in view. And I take it as an almost universal rule of construction that the words of a statute must be understood in a sense calculated to promote the object with which it was enacted. I interpret the word "shall" in s. 28 of Act VIII of 1871 to imply an absolutely imperative command addressed by

(1) 15 B. L. R. 228 ; 24 W. R. 75 ; (2) L. L. R., 1 All. 405 ; L. R., 4 Ind. L. R., 2 Ind. Ap. 210. Ap. 166.

1885

SHEO DAYAL  
MAL  
v.  
HARI RAM.

the Legislature to all persons presenting documents for registration. It is obvious that the insignificant piece of land at Patna was not "some portion" of the hypothecated property, using that expression in the sense in which I believe it to have been used in s. 28. Under that section, therefore, an irregularity was committed, and the question then arises whether or not that irregularity is condoned by any provision of Act VIII of 1871, or any other Act, or by any principles which ought to be applied in the construction of statutes. The learned pleader for the respondents relied on s. 85 of Act VIII of 1871 :—" Nothing done in good faith pursuant to this Act or any Act hereby repealed by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure." Now, the imperative direction of s. 28 is addressed not to the registering officer, but to the person presenting a document to that officer for registration. S. 85, on the other hand, is not addressed to the parties, but relates to the registering officer. I do not think, therefore, that s. 85 can help the respondents' case, especially as that section refers only to defects in the appointment or procedure of the registering officer. Here there is no question of defective appointment, nor, looking to the sections of the Act which appear under the heading of procedure, do I think that any defect of procedure under these sections can be shown. The only remaining question is that of notice to *bonâ fide* transferees for value, which is one of the main objects of the Registration Law. The registration being vitiated by irregularity, as the learned Chief Justice has shown, I am further of opinion that no other notice to the purchaser has been sufficiently proved. I concur, therefore, in decreeing the appeal with costs.

*Appeal allowed.*

Before Mr. Justice Oulfield and Mr. Justice Mahmood.

BRADLEY (DEFENDANT) v. ATKINSON (PLAINTIFF)\*

*Landlord and tenant—Notice to quit—Act IV of 1882 (Transfer of Property Act), ss. 106, 111.*

On the 11th December 1882, A, who had, on the 1st July 1882, let rooms in a dwelling-house to B, sent a letter to the tenant in the following terms:—" If the rooms

---

\* Second Appeal No. 8 of 1884, from a decree of F. S. Bullock, Esq., Officiating District Judge of Allahabad, dated the 2nd October, 1883, affirming a decree of Babu Ram Klai Chaudhri, Subordinate Judge of Allahabad, dated the 18th June, 1883.

1885

January 15.