

substitution for the limitation provided for the execution of decrees by the Indian Limitation Act, 1877. It could not have been the intention of the Legislature that when there was no property other than that previously vested in the receiver and exempted from execution, and no property subsequently acquired possibly until eleven years after the discharge of the insolvent, the judgment-creditors, in order to keep their decrees alive, should be obliged to make fruitless applications for execution during the period to which the provisions of section 357 apply. We dismiss this appeal with costs.

1896

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 LALMAN  
 v.  
 GOPI NATH.

*Appeal dismissed.*

*Before Mr. Justice Aikman.*

DIWAN SINGH AND OTHERS (DEFENDANTS) v. JADHO SINGH (PLAINTIFF).  
 Act No. III of 1887 (*Indian Registration Act*), section 50—Registered and unregistered documents—Priority—Notice.

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December 23.

*Held* that section 50 of the Indian Registration Act, 1877, will not avail to give the holder of a subsequent registered deed priority in respect of his deed over the holder of an earlier unregistered deed, not being a compulsorily registrable deed, if in fact the holder of the registered deed has at the time of its execution notice of the earlier unregistered deed. *Abool Hossein v. Raghu Nath Sahu* (1), *Hathising Sobhai v. Kuvarji Jacher* (2), and *Krishnamma v. Suranna* (3) followed. *The Agra Bank v. Barry*, (4) and *Ram Antar v. Dhanauri* (5), referred to.

This was a suit for sale upon a mortgage. The mortgage in question was executed on the 14th of January 1893, and, being for a sum below Rs. 100, was not registered. The defendants to the suit comprised the mortgagor, a subsequent mortgagee and certain persons who had purchased the property mortgaged to the plaintiff under a registered sale-deed executed subsequently to the plaintiff's mortgage. The vendee defendants resisted the suit, relying on their sale-deed and on section 50 of the Registration Act, 1877.

\* Second Appeal No. 308 of 1896, from a decree of Maulvi Muhammad Mazhar Husain Khan, Subordinate Judge of Mainpuri, dated the 16th January 1896, modifying a decree of Munshi Tara Prasad, Munsif of Phaphund, dated the 15th April 1895.

(1) 1. L. R., 13 Cal., 70.

(3) 1. L. R., 16 Mad., 148.

(2) 1. L. R., 10 Bom., 105.

(4) 7, E. and I. A., 135.

(5) 1. L. R., 8 All., 540.

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SINGH.

The Court of first instance (Munsif of Phaphund) dismissed the plaintiff's claim so far as the defendants vendees were concerned, but gave him a decree for money against the mortgagor only.

On appeal by the plaintiff, the lower appellate Court (Subordinate Judge of Mainpuri) found as a fact that the defendants vendees at the time when their sale-deed was executed had notice of the plaintiff's mortgage, and, following the decision of the Madras High Court in the case of *Krishnamma v. Suranna* (1) decreed the plaintiff's claim for sale.

The defendants vendees appealed to the High Court.

Munshi Madho Prasad, for the appellants.

Babu Satya Chandur Mukerji, for the respondent.

AIKMAN, J.—The suit out of which this appeal arises was brought by the plaintiff, who is respondent here, to recover money due to him under a mortgage-deed. The mortgage is dated the 14th of January 1893. The amount secured by it was less than 100 rupees, and the registration of the deed was not compulsory. It was not registered. On the 9th of January 1895, the appellants before me purchased the mortgaged property by a sale-deed which was registered. It has been found by the lower Court that the appellants, when they bought the property, had notice of the plaintiff's mortgage.

The lower appellate Court, following a Full Bench decision of the Madras High Court (*Krishnamma v. Suranna*) (1), has held that the fact of the defendants-appellants having notice of the plaintiff's mortgage deprived them of the right to rely on the provisions of section 50 of the Registration Act (Act No. III of 1877), which provides that certain documents shall, if duly registered, take effect as regards the property comprised therein against every unregistered document relating to the same property, not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

It is clear that this enactment makes no reference whatever to the holder of a subsequent registered document having notice of the prior

(1) I. L. R., 16 Mad., 148.

unregistered one; and lays down broadly that the former shall have priority over the latter; but, notwithstanding this, the High Courts of Madras, Bombay and Calcutta (*vide* the Madras ruling before quoted: for Bombay, *Hathising Sobhai v. Kuwarji Jawher* (1), and for Calcutta, *Abdul Hossein v. Raghu Nath Sahu* (2), have considered themselves at liberty to apply the equitable doctrine of notice to cases like the present. These have, it would appear, been in a great measure influenced by the decisions of the English Courts; see in particular the case of *The Agra Bank v. Barry* (3). In that case (at p. 148) Lord Cairns observed that "by decisions which have now well established the law, it has been settled that, notwithstanding the apparent stringency of the words contained in the Act, still if a person registers a deed, and if at the time he registers the deed either he himself or an agent, whose knowledge is the knowledge of his principal, has notice of an earlier deed, which though executed is not registered, the registration which he actually effects will not give him priority over that earlier deed." The *ratio decidendi* in that case was, it appears, that the object of registration laws being to give parties who enter into a transaction with regard to property notice of previous transactions concerning that property, that object is accomplished if the person who enters into a subsequent transaction has *aliunde* notice of a deed affecting the property and executed before his own. There is no case in this Court exactly in point, unless it be the decision in *Ram Autar v. Dhanawari* (4) the facts of which are not quite on all fours with this case. There is, however, no decision of this Court on the question of notice as affecting the provisions of section 50 of the Registration Act which is adverse to the decisions of the High Courts above referred to. Following those decisions I hold that the plea based on the provisions of section 50 of the Registration Act must fail. The appeal is dismissed with costs.

*Appeal dismissed.*

(1) I. L. R., 10 Bom., 105.  
 (2) I. L. R., 13 Calc., 70.

(3) 7, E. and I. A., 135.  
 (4) I. L. R., 8 All., 540.