

1898

SRI
GIRDHARJI
MAHARAJ
v.
CHOTE LAL.

occupier's right is a mere personal right of residence. The other case to which we have been referred is *Chajju Singh v. Kanhia* (1). There the Full Bench held that the zamindars of a village are, as a rule and presumably, the owners of all the house sites in the village, and that a house left unoccupied by a tenant lapses to the landlord in the absence of heirs or of other lawful assignees of the last occupier. "Other lawful assignees" must not be understood to mean purchasers by private or auction-sale from such occupier.

Chote Lal, the only defendant defending this suit, has made out no case. This appeal must be allowed. We give the plaintiff a decree declaring that the occupiers of the house had no right, except to the timber, the wood-work and the roofing, which could be sold in execution of a decree against them, that a right to occupy the house was not transferable by sale either private or in execution of a decree, and a decree that the plaintiff be put in possession of the site claimed. Chote Lal will be allowed thirty days from the notification of this decree in the Court below to remove such of the materials of the house as were not part of the land; that is, he cannot remove the walls of the house if they are constructed of soil belonging to the village. We allow this appeal with costs in all Courts.

Appeal decreed.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Burkitt.

DIWAN SINGH AND OTHERS (DEFENDANTS) v. JADHO SINGH
(PLAINTIFF).*

Act No. III of 1877 (Indian Registration Act), section 50—Registered and unregistered documents—Priority—Notice.

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.

* Appeal No. 37 of 1897, under section 10 of the Letters Patent.

(1) Weekly Notes, 1881, p. 114.

1898

January 31.

1898

 DIWAN
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 v.
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THE suit out of which this appeal arose was a suit to recover money due under a mortgage bond held by the plaintiff dated the 14th of January 1893. The mortgage was for a sum not exceeding Rs. 100, and was not registered. Subsequently to the date of this mortgage the mortgagee sold the mortgaged property by a registered sale deed dated the 9th January 1895. The defendants to the suit were the mortgagor and the vendees.

The Court of first instance (Munsif of Phaphund) decreed the plaintiff's claim against the mortgagor alone, holding it not established that at the time of the execution of their sale deed the vendees had notice of the prior unregistered mortgage.

The plaintiff appealed, and the lower appellate Court (Subordinate Judge of Mainpuri), finding that the vendees had in fact had notice of the plaintiff's mortgage and therefore could not claim priority under section 50 of Act No. III of 1877, decreed the plaintiff's claim also as against the defendants vendees.

The defendants vendees appealed to the High Court, and their appeal coming before a single Judge of the Court was dismissed (see I. L. R., 19 All., p. 145). From that judgment the defendants vendees appealed to the High Court.

Munshi *Madho Prasad*, for the appellant.

Mr. *Muhammad Ishaq Khan*, for the respondent.

EDGE, C. J. and BURKITT, J. :—In this case it is contended in appeal that the holder of a registered deed of sale of immovable property who, at the time of the making of his contract of sale, had notice of a prior unregistered mortgage, which did not require registration, was entitled to priority by reason of section 50 of the Indian Registration Act, 1877, over the holder of the unregistered mortgage. The rule of equity on this subject which has always been followed in this Court has been applied by our brother Aikman in the decree from which this appeal has been brought. We dismiss this appeal with costs.

Appeal dismissed.