

APPELLATE CIVIL.

1906
January 4.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

ANNU MAL AND OTHERS (DEFENDANTS) v. THE COLLECTOR OF
BAREILLY (PLAINTIFF).*

Act No. III of 1877 (Indian Registration Act), section 17—Agreement to convey and possession given to transferee—Conveyance by registered deed to transferee who has notice of previous agreement—Estoppel.

It was agreed amongst certain successful plaintiffs, who by a decree of Court had become entitled to a large estate, that a certain relative who had helped them in their suit should have a share in the property, and this agreement was carried out to the extent that this person's name was entered in the village papers as a co-sharer and he was put into possession by consent of the other co-sharers, but no conveyance of the share was executed and registered. Subsequently, one of the original donors purported to sell the share so assigned to a person who had notice of the terms upon which it was held by the original donee. *Hold*, that this sale, even though carried out by means of a registered instrument, was ineffectual as against the rights of the original donee, inasmuch as both the vendor knew that in equity he could not have a title to convey, and the vendee also was aware that the vendor could not convey without committing a fraud on the original donee. *Benham v. Keane* (1), *Greaves v. Tofield* (2) and *Le Neve v. Le Neve* (3) referred to.

THE plaintiffs (respondents) brought a suit in the court of the Subordinate Judge of Bareilly, praying that it might be declared that they had an eight-anna proprietary share in the village of Maheshpur and that the said share could not be sold in execution of a decree obtained by the Allahabad Bank against one Lalji Mal.

The lower Court gave the plaintiffs a decree in respect of a 5-anna $3\frac{1}{2}$ -pie share.

From this decree certain defendants, who claimed to be assignees of the property in dispute, preferred this appeal.

The narrative of the proceedings which led up to this appeal is given very fully in the judgment of their lordships. The following chronological statement is given to facilitate reference :—

* First Appeal No. 271 of 1903, from a decree of Babu Prag Das, Subordinate Judge of Bareilly, dated the 31st of July, 1903.

(1) (1861) 1 Johnson and Hemming,
685 at p. 702.

(2) (1880) L. R., 14 Ch. D., 563.
(3) (1748) 3 Atk., 646.

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1867.—Chaudhri Naubat Ram died childless in 1867 leaving, together with other property, the village Maheshpur. He was succeeded by his widow, Rani Ganesh Kunwar.

1878.—On Rani Ganesh Kunwar's death Rani Naraini Kunwar, claiming to be widow of an alleged adopted son of Naubat Ram, usurped the estate.

20th June, 1881.—Shib Lal, and Piari Lal who were held to stand on the same level as reversioners and Lalji Mal who had advanced funds for the litigation obtained a decree for possession from the District Judge of Bareilly against Rani Naraini Kunwar. Narbada Prasad and Bhairo Prasad, were also among the plaintiffs, but withdrew as they were found to be more distant reversioners. Bhairo Prasad, however, on the death of Piari Lal, succeeded to his interest.

15th September, 1884.—Shib Lal and Bhairo Prasad (successor of Piari Lal) entered into an agreement, to which Lalji Mal was an attesting witness, by which they agreed to give Narbada Prasad a 2-anna 8-pie share in the property of which they obtained possession in consideration of the assistance he had afforded in their successful suit, and they agreed to get his name entered in the khewats as owner of that share. Narbada Prasad's name was duly recorded in the khewats. The agreement was engrossed on a Rs. 5 stamp paper, but it was not registered, nor was any formal conveyance executed.

8th July, 1885.—Rani Naraini Kunwar appealed. A compromise was arrived at under which, however, Maheshpur remained with the successful plaintiffs.

24th September, 1885.—Meanwhile Rani Naraini Kunwar had purported to sell Maheshpur to Ram Sarup, and in execution of a decree against Ram Sarup, Maheshpur was sold and purchased by Har Charan Misr, now dead, but represented by the present plaintiffs-respondents under the guardianship of the Court of Wards.

9th March, 1897.—Bhairo Prasad, Shib Lal, Narbada Prasad, Lachmi Narayan (nephew of Shib Lal) and Lalji Mal referred to arbitration what share Lachmi Narayan should have of Shib Lal's share, the document reciting the shares of each of the

other four (*viz.* Shib Lal 4 annas 8 pies, Bhairo Prasad 3 annas 8 pies, Lalji Mal 5 annas 4 pies, Narbada Prasad 2 annas 8 pies), and stating that there was no dispute as to the said four shares.

7th June, 1894.—Shib Lal (in a deposition made in a suit instituted by his nephew, Lachmi Narain) admitted that a 2-anna 8-pie share had been awarded to Narbada Prasad.

8th May, 1896.—Shib Lal conveyed to Lalji Mal a 7-anna 2-pie share in Maheshpur (*i.e.* his own $4\frac{1}{2}$ annas and the 2-anna 8-pie share of Narbada Prasad now in dispute).

10th October, 1896.—Narbada Prasad executed a deed of relinquishment of his 2-anna 8-pie share in favour of Har Charan Misr, whose representatives in title are the plaintiffs-respondents.

13th February, 1900.—Lalji Mal's widow, Musammat Champa Dei, purported to convey rights in Maheshpur to Annu Mal, &c., the answering defendants.

1901.—The Allahabad Bank attached in execution and applied for sale of a 13-anna $4\frac{1}{2}$ -pie share in Maheshpur as being the property of Lalji Mal.

The present plaintiffs-respondents filed an objection under section 278 of the Code of Civil Procedure, contesting the rights of the representatives of Lalji Mal (then dead).

16th September, 1901.—Their objection was rejected and they brought the present suit under section 283 of the Code of Civil Procedure against—

(1) the Allahabad Bank,

(2) the widow and sons of Lalji Mal,

(3) Annu Mal, &c., assignees of Champa Dei, widow of Lalji Mal, for a declaration that they possess an 8-anna share in Maheshpur. The only dispute in the suit was as to a 2-anna 8-pie share which the plaintiffs-respondents claim through Narbada Prasad.

The Bank having been paid off did not appear, nor the second set of defendants. Only Annu Mal, &c., assignees under the conveyance of 13th February, 1900, appeared.

The plaintiffs-respondents claimed title on the basis of the instruments of 15th September, 1884 and 10th October, 1896.

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The defendants-appellants claimed title on the basis of the instruments of 6th May, 1896 and 13th February, 1900.

Pandit *Moti Lal Nehru* and Dr. *Satish Chandra Banerji*, for the appellants.

Mr. *A. E. Ryves*, for the respondents.

STANLEY, C. J. and BURKITT, J.—This is an appeal from the decision of the learned Subordinate Judge of Bareilly in one of the numerous suits which have arisen in the course of litigation which followed the death of Chaudhri Naubat Ram of Bareilly. The question we have to deal with concerns a 2-anna 8-pie share in mauza Maheshpur. That village formed part of the estate left by Chaudhri Naubat Ram, who died without issue in 1867. He was succeeded by his widow, Rani Ganesh Kunwar, who died in 1878. On her death possession of the estate was usurped by Rani Naraini Kunwar, claiming to be widow of an alleged adopted son of Naubat Ram. On suit by reversioners the District Judge in 1881 held that Rani Naraini Kunwar had no title, and gave a decree for possession of the estate to the reversioners. Manza Maheshpur was one of the villages affected by that decree. The successful plaintiffs were Shib Lal and Piari Lal, who were found by the Court to stand on the same level as reversioners, and Lalji Mal who had advanced funds for the litigation. Among the plaintiffs claiming to be reversioners, there had been arrayed one Narbada Prasad, but, being found to be two degrees more distant than the others from Naubat Ram, he withdrew, as also did one Bhairo Prasad for a similar reason. The latter, however, on the death of Piari Lal succeeded to his interest under the decree. On appeal by Naraini Kunwar against the decree of the District Judge of June, 1881, a compromise was arrived at between the parties. A small portion of Naubat Ram's estate was left with the unsuccessful defendant. In all other respects the decree of the District Judge was affirmed. Maheshpur was not affected by the compromise. The appellate decree of the High Court in pursuance of the compromise was passed on July 8th, 1885.

Meanwhile, Maheshpur had been the subject of litigation, Rani Naraini Kunwar having purported to sell it to one Ram Sarup. In execution of a decree against Ram Sarup, the

village was, on September 24th, 1885 (subsequent to the High Court decree of July, 1885), put up to auction and purchased by Har Charan Misr, now deceased, but represented by the plaintiffs-respondents here, who, being minors, sue under the guardianship of the Court of Wards.

The present suit has arisen in the following manner:—

In 1901 the Allahabad Bank, holder of a decree against Lalji Mal, attached in execution, and applied for sale of a 13-anna $4\frac{1}{2}$ -pie share in mauza Maheshpur as being property of its judgment-debtor, Lalji Mal, and as such liable to be taken in execution of the Bank's decree. Thereupon the present plaintiffs-respondents filed an objection under section 278 of the Code of Civil Procedure, contesting the rights of the representatives of Lalji Mal (then deceased) to be owners of the 13 annas $4\frac{1}{2}$ pies of Maheshpur. That objection was rejected by the Subordinate Judge on September 16th, 1901 (Record No. 7C.)

Then, acting on the permission given by section 283 of the Code of Civil Procedure, the present suit was preferred by the plaintiffs-respondents. They pray for a declaration that they possess an 8-anna share in mauza Maheshpur, and that it is not saleable under the Bank's decree. But, as already mentioned, the only dispute in the suit is, as to a 2-anna 8-pie share which the plaintiffs-respondents claim through Narbada Prasad above-mentioned. We have no concern here with the remainder of the 8-anna share claimed in the plaint. There were three sets of defendants to that suit, namely, (1) the Allahabad Bank, (2) the widow and sons of Lalji Mal, and (3) the defendants Annu Mal, Sundar and others, who claim title under a conveyance to them on February 13th, 1900, from Musammat Champa Dei, widow of Lalji Mal. The Bank having been paid off has not appeared, nor have the widow and other representatives of Lalji Mal. The only defendants who have appeared are the vendees under the conveyance of February 13th, 1900. The learned Subordinate Judge gave the plaintiffs-respondents a declaration as to 5 annas $3\frac{1}{2}$ pies in which the 2-anna 8-pie share is included. Hence this appeal. We now proceed to recount the history of this share.

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On September 15th, 1884, nearly a year before the decree of the High Court (July 8th, 1885), on the compromise in Rani Naraini Kunwar's suit had been pronounced, the two successful plaintiffs, Shib Lal and Bhairo Prasad (successor to Piari Lal), entered into an agreement which is the most important paper in this suit. In this document (Record No. 12) the two executants, after reciting the successful issue in their favour of the suit against Rani Naraini Kunwar, and after setting out how Narbada Prasad had looked after that case for them and had procured documentary evidence to support their claim and that he was like them descended from the common ancestor, one Chaudhri Hiranman, proceeded to declare that *therefore* (clearly meaning in consideration of the foregoing) the executants would give to Narbada Prasad a 2-anna 8-pie share in the whole of the movable and immovable property which they might acquire under the decree or a compromise effected under it "when a decree is passed and possession is obtained, or when a mutual compromise is made." They set forth that this is done "in consideration for his favour in giving documentary evidence and of the efforts made by him in the prosecution of the suit," and they covenant to get his name entered in the khewats in the column of proprietors as zamindar and owner in all the villages in proportion to his share aforesaid. To this instrument the third successful plaintiff, Lalji Mal, was an attesting witness. The "right purchased" by him (Lalji Mal) and some villages which had been dedicated to religious purposes were excepted. There can be no possible doubt that Lalji Mal, though not formally a party to this document, was well aware of its contents. We may add that a perusal of the judgment of the District Judge of Bareilly of the 20th June 1881, shows that the success of the plaintiffs in that suit was to a large extent due to the exertions of Narbada Prasad in searching for and producing old documents bearing on the pedigree of Naubat Ram's family. This instrument was engrossed on a Rs. 5 stamp paper, but it does not appear to have been registered, nor is any formal conveyance of the 2-anna 8-pie share to Narbada Prasad shown to have been executed. The defence is chiefly founded on these two facts, namely, the absence of registration and of a formally

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executed and registered conveyance to Narbada Prasad. That the covenant to get the name of Narbada Prasad recorded in the khewat as the owner of a 2-anna 8-pie share was carried out appears from our appellate judgment of January 6th, 1902 (No. 18C. of the Record). That was a suit between Shib Lal on one side and Narbada Prasad on the other. The defendants-appellants claim title to the 2 annas 8 pies on the strength of a conveyance (No. 10 of the Record) by Shib Lal on May 8th, 1896, to Lalji Mal of a 7-anna 2-pie share in Maheshpur, which includes the 2-anna 8-pie share in dispute. The plaintiffs-respondents claim title to the same share by virtue of a deed of relinquishment (No. 6 of the Record) executed on October 10th, 1896, by Narbada Prasad in favour of Kunwar Har Charan Misr, whose representatives in title are the plaintiffs-respondents. So both parties to the present suit derive title from the plaintiff and defendant to that suit. The object of Shib Lal in instituting that suit was to obtain from the Court a declaration that neither he (Shib Lal) nor any other of the successful claimants to Naubat Ram's estate "had given or allotted or had agreed to give any portion of that estate to Narbada Prasad, and that an entry of the latter's name purporting to have been made by the plaintiff (Shib Lal) was colourable and fictitious." The reason for the "colourable and fictitious" entry of Narbada Prasad's name was stated by Shib Lal to be that he might thereby save the properties from a law suit about to be instituted by one Lachmi Narayan by making it appear that they belonged to Narbada Prasad and not to Shib Lal. The suit was dismissed by the Court of first instance. In our appellate judgment in that suit we came to the conclusion that Shib Lal's case was a false one; that he did not procure the entry of Narbada Prasad's name collusively with the fraudulent object (as he alleged) of defeating Lachmi Narayan, but that, on the contrary, he caused entry to be made in pursuance of the agreement of September 15th, 1884, an agreement which was affirmed by that of March 9th, 1887, by the parties to the suit for possession of the estate of Naubat Ram. We further were of opinion that the consideration given by Narbada Prasad was a good consideration and that the agreement was binding on the parties to it. We

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pointed out that the parties to the agreement acknowledged that such was the case by giving full effect to it in the case of Narbada Prasad. Finally, we were of opinion that it was the duty of Shib Lal under the agreement to have had a formal conveyance in respect of the 2-anna 8-pie share executed in favour of Narbada Prasad, and we did not consider that the fact that he had neglected that duty was any reason why we should give him a decree for possession of property to which he manifestly had no title in equity. We see no reason now for altering any of the opinions we expressed in that judgment. We cite it here for the purpose of showing that the covenant in the agreement of September 15th, 1884, to have the name of Narbada Prasad entered in the khewat in proportion to his share, was carried into execution by Shib Lal, and that that agreement was not (as contended for the appellants here) a mere unfulfilled promise. The next document to which we would advert is Record No. 60C of March 9th, 1887. It was executed by five persons, namely, (1) Bhairo Prasad, (2) Shib Lal, (3) Narbada Prasad, (4) Lachmi Narayan, and (5) Lalji Mal. It commences by reciting the names of the parties to the suit for possession of Naubat Ram's estate and how the name of Narbada Prasad was removed from the array of plaintiffs in that suit "in compliance with the requirements of procedure" and how by "mutual agreement the shares of each of the co-sharers in the disputed property were fixed as specified below *which are maintained up to the present by mutual consent,*" those shares being as follows:—Shib Lal $4\frac{1}{2}$ annas, Bhairo Prasad $3\frac{1}{2}$ annas, Narbada Prasad 2 annas 8 pies, and Lalji Mal 5 annas 4 pies. Having set forth the above as the interest of the "four co-sharers" in the property—as the interest actually existing in and held by them—the instrument proceeds to set forth that though *no dispute exists* between "the parties to the suit with regard to the *aforesaid shares,*" a dispute did exist between *Shib Lal and one Lachmi Narayan* respecting the share of Lachmi Narayan. The document then proceeds to refer certain matters, and amongst others "what share Lachmi Narayan should have in Shib Lal's share," to the arbitration of Mr. Gasper, a vakil. This Lachmi Narayan is the nephew of Shib Lal already mentioned, whom Shib Lal in the former suit

alleged he desired to defraud. This document was duly registered on the same day. In our judgment of January 6th, 1902, alluded to above, we fully considered the meaning and intention of this agreement of March, 1887, and came to the conclusion that it was executed in pursuance of the earlier agreement of September, 1884. We pointed out that in this agreement of March, 1887, two matters were especially noticeable:—(1) that no reference was made to the arbitrator to decide what fractional share was to be allotted to any of *the parties to the suit*, a matter which the four executants had settled for themselves, and (2) that Narbada Prasad is described in it as one of the “parties to the suit.” We also found that the name of the parties (and amongst them that of Narbada Prasad) had been duly entered in the village khewats. It thus appears that full effect was given to the agreement. Shib Lal himself admitted that such was the case, for, as stated in the judgment of January, 1902, Shib Lal in a suit instituted by his nephew, Lachmi Narayan, “pleaded that by an arbitration award a share of 2 annas 8 pies had been held to belong to Narbada Prasad.” It is manifest therefore that in every way Shib Lal acknowledged the title of Narbada Prasad as owner of the 2-anna 8-pie share and had his name so recorded in the village khewats.

The next document we have to consider is a sale-deed bearing date of the 8th May 1896 (No. 10 of the Record), by which in consideration of Rs. 7,000 Shib Lal transfers to Lalji Mal a 7-anna 2-pie share in Maheshpur (including the 2-anna 8-pie share in dispute), totally ignoring Narbada Prasad’s admitted claim to 2 annas 8 pies. Now, it is hardly necessary to point out that both the vendor and the vendee under this conveyance had full knowledge and notice of Narbada Prasad’s right to the 2-anna 8-pie share. They both were parties to the agreement of March, 1887, and though Lalji Mal was not a party to the agreement of September, 1884, he was an attesting witness to its execution, and, considering its contents and the careful manner in which it safeguarded his interests, we have no doubt that Lalji Mal was cognisant of its provisions. The position then is this,—Shib Lal, the vendor, knowing that he had no title to the 2-anna 8-pie share, and knowing that the share

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belonged to Narbada Prasad, purported to sell it to Lalji Mal, who also knew that his vendor had no title to transfer it and who knew that the true owner was Narbada Prasad. It is, we think, immaterial that in executing this conveyance Shib Lal purported to convey his interest under a decree passed by the High Court on December 16th, 1895 (No. 15 of the Record).

The suit in which that decree was passed was instituted by Shib Lal, Bhairo Prasad and Lalji Mal, the successful plaintiffs in the suit for possession of Naubat Ram's estate, against Misr Har Charan Lal to recover possession of Maheshpur as part of that estate. Ignoring the agreements of 1884 and 1887, they did not make Narbada Prasad a party to that suit. He is therefore not adversely affected by the decree in it, and by virtue of the two agreements just mentioned, he was equitably entitled to a 2-anna 8-pie share in the subject-matter of that decree. An appeal was entered to Her late Majesty in Council against the decree, but was not prosecuted.

The last paper to which it will be necessary to refer is No. 6 of the Record. It is called a "deed of relinquishment," and was executed by Narbada Prasad on October 10th, 1896. In it the executant recites his title to a 2-anna 8-pie share in the whole of the estate of Naubat Ram, which, he sets forth, is supported by the arbitration proceedings and by the entry of his name in the village papers, and by other proceedings taken by the sharers in the estate, and alleges that he is in proprietary possession and enjoyment of his specified share in the estate, which includes Maheshpur. The executant sets forth a history (mostly incorrect) of the previous litigation about Maheshpur, in which he says he incurred a debt which he considers himself bound to discharge. For that reason and for the sake of "good in both the worlds," being desirous to pay off the valid debt due by his ancestor, he relinquishes his right to the 2 annas 8 pies in Maheshpur, in which he declares he is a co-sharer (although his name does not appear in the High Court decree) to Misr Har Charan Lal, whom he describes as appellant in the appeal just mentioned to the Privy Council, and declares that he has severed his connection with Maheshpur. This deed is

the title upon which the plaintiffs-respondents defend their title to the 2-anna 8-pie share in Maheshpur.

Now on the above state of facts it is contended for the appellants that the plaintiffs-respondents' title is defective. It is argued that under the two agreements commented on above Narbada Prasad, through whom the plaintiffs claim title, had only an unregistered agreement, nothing more than a mere promise, never carried into execution by any act of transfer. Now, as to this, it is perfectly certain that the covenant to have Narbada Prasad's name recorded in the khewat as owner and proprietor of the 2-anna 8-pie share was fully carried out. This is shown by the arbitration agreement of March, 1887, in which it is stated that the shares of the four co-sharers as therein recorded were fixed by "mutual agreement" and "maintained up to the present by mutual consent." Then we have an acknowledgment under Shib Lal's hand that Narbada Prasad owned a 2-anna 8-pie share and that he (Shib Lal) owned no more than 4 annas 6 pies. Yet, in spite of this acknowledgment, we find Shib Lal nine years afterwards selling to Lalji Mal a 7-anna 2-pie share (4 annas 6 pies and 2 annas 8 pies = 7 annas 2 pies).

For the appellants, stress is laid on the absence of any registered conveyance to Narbada, and it is contended that under the Registration Act this is a fatal flaw in their title. The appellants also claim priority on the ground that the sale-deed to Lalji Mal was executed by Shib Lal in May, 1896, while the deed of relinquishment by Narbada Prasad bears date of October 10th, 1896. Now it has been frequently held that the Registration Statute should not be made an engine to work injustice, and that therefore the holder of a registered conveyance who took it with notice of the existence of a prior, but unregistered, conveyance will not, despite the provisions of the Registration Act, be given priority against the holder of the unregistered deed. This is now the generally-accepted rule in these Provinces. To the same effect is the rule in England in the case of a registry county. In the case of *Benham v. Keane* (1) the law was declared by Wood, V.C., to be that the "conscience of a purchaser is affected through the conscience

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(1) (1861) 1, Johnson and Hemming, 686, at p. 702.

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of the person from whom he buys, if that person is precluded by his previous acts from honestly entering into the contract to sell; and therefore anyone who purchases with the knowledge that his vendor is precluded from selling, is subject to the same prohibition as the vendor himself." We have already abundantly shown that the vendor, Shib Lal, was in equity precluded from selling the 2-anna 8-pie share as if it were his own property; he could not honestly enter into a contract to sell the 2 annas 8 pies; and we have also shown that Lalji Mal purchased with the knowledge that his vendor, Shib Lal, was equitably precluded from selling that which he, to his vendee's knowledge, had already parted with to Narbada Prasad.

To the same effect are the observations of the Lords Justices in the case of *Greaves v. Tofield* (1). In that case, which turned upon the Middlesex Registry Act, the provisions of which as to the priority of registered over unregistered documents are the same as in the Indian Registration Act, James, L.J., at p. 571, cites with approval the conclusions of Lord Hardwicke in *Le Neve v. Le Neve* (2) that "the protection which was meant to be afforded was a protection against secret incumbrances, and that it never could have been the intention of the Legislature to put a man who had knowledge of a conveyance in the position of a man who was liable to be defrauded or injured by the existence of some secret dealing with the land." Another extract from the judgment of Lord Hardwicke is given by Baggallay, L.J., (at p. 575) to the effect that "the intent of the preamble of the Act was to secure subsequent purchasers and mortgagees against prior secret conveyances and fraudulent incumbrances, for the last of which there was no occasion to provide. The first means that a subsequent purchaser, having registered, should prevail against a prior secret conveyance of which he had no notice, but if he had notice of a prior conveyance for valuable consideration which was vested properly, that is not a secret conveyance."

In the same case at p. 671, Bramwell, L. J., held it to be established beyond dispute "that if a man having an estate agrees to sell it or to grant an interest in it for valuable consideration, and afterwards disregarding the bargain he has made,

(1) (1880) L. R., 14 Ch. D., 563.

(2) (1748) 3 Atk., 646.

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conveys to a third person or so deals with it by bargain with a third person that he is incompetent to convey the estate or grant the interest to the first which he had agreed to do, and the third person has all along had notice of the first contract, the conscience of the second purchaser is affected and he cannot retain the estate without giving the person who entered into the first contract that right in it for which he had stipulated." And again:—"The intention of the Legislature in such Acts (the Registry Acts) as I have referred to, was to afford a protection to persons whose consciences were not affected, and not to give the second purchaser whose conscience was affected an opportunity of joining in the commission of that which was a breach of contract and a wrong to the first person who made the bargain."

Applying to the appeal now before us the equitable principle laid down exhaustively in the extracts above cited, we have come to the conclusion that, as Lalji Mal had full notice all along of the dealings between Shib Lal and Narbada Prasad (and indeed was himself a party to them) by which Narbada Prasad was recorded as owner of a 2-anna 8-pie interest in the whole estate of Naubat Ram, the appellants being representative in interest of Lalji Mal cannot in equity be heard to allege that Narbada Prasad had not the 2-anna 8-pie interest in Maheshpur, and that it had vested in them. It is admitted that the plaintiffs-respondents are in actual possession of the 2-anna 8-pie share. By his acts and admissions Shib Lal had precluded himself from honestly transferring the 2-anna 8-pie share to anyone other than Narbada Prasad, and Lalji Mal had all along full notice that Shib Lal had put it out of his power honestly to execute the conveyance of March 10th, 1896, in so far as it purported to affect the 2-anna 8-pie share of mauza Maheshpur. When Lalji Mal accepted that conveyance, he was not a *bond fide* purchaser, but, on the contrary both he and his vendor acted dishonestly. Clearly the object of Shib Lal throughout was to get rid of Narbada Prasad and to evade the effect of the agreements of September, 1884 and March, 1887, cited above.

For the above reasons we are of opinion that the decision of the learned Subordinate Judge is right and should be affirmed. We therefore dismiss this appeal with costs.

Appeal dismissed.