

1908
March 13.

Before Mr. Justice Sir George Knox.

KHIALI RAM (PLAINTIFF) *v.* HIMMATA AND OTHERS (DEPENDANTS).^{*}
Act No. III of 1877 (Indian Registration Act), section 50—Mortgage—Sale of property comprised in an unregistered mortgage—Liability of purchaser—Notice.

Property was purchased which was the subject of an unregistered mortgage, the registration of which was not compulsory. The purchaser had no notice of the mortgage at the time of execution of the sale-deed in his favour, but received notice before the sale-deed was registered. *Held* that the mortgage was binding on the purchaser. The principle of *Diwan Singh v. Jadhoo Singh* (1) and *Bhichhi Rai v. Udit Narain Singh* (2) applied.

THE facts of this case are as follows:—

One Khiali Ram was the holder of an unregistered mortgage-deed, dated the 27th of January 1895. The deed was one the registration of which was not compulsory under the Indian Registration Act. He sued the obligors of the deed to recover the money due under his deed and in default to bring to sale the property hypothecated in the deed. He also added to the suit as a party one Bhoja, who had purchased the same property under a sale-deed, dated the 8th of February 1905, but not registered until the 7th of April 1905. The Court of first instance (first Additional Munsif of Meerut) dismissed the claim, and the lower appellate Court (Additional District Judge) on appeal arrived at the same finding. It held that there was no evidence to show that the respondent, Bhoja, had any knowledge of the plaintiff's mortgage on the date of the sale; but it further found that a notice was served on Bhoja after the execution of the sale-deed, but before its registration. The lower appellate Court held that as there was no evidence to show that the respondent, Bhoja, had notice on the date he got the sale-deed executed, he was not bound to pay the amount of the mortgage. The plaintiff appealed to the High Court.

Munshi *Gulzari Lal*, for the appellant.

Babu *Surendra Nath Sen*, for the respondents.

KNOX, J.—This second appeal arises out of a suit brought by Khiali Ram. Khiali Ram is a holder of an unregistered

^{*} Second Appeal No. 3 of 1907, from a decree of Muhammad Ahmad Ali Khan, Additional Judge of Meerut, dated the 20th of September, 1906, confirming a decree of Ram Chandra Chaudhri, Additional Munsif of Meerut, dated the 6th of January, 1906.

mortgage-deed, dated the 27th of January 1895. The deed was one the registration of which was not compulsory under the Indian Registration Act. He sued the obligors of the deed to recover the money due under his deed and in default to bring to sale the property hypothecated in the deed. He also added to the suit as a party one Bhoja, who had purchased the same property under a sale-deed, dated the 8th of February 1905, but not registered until the 7th of April 1905. The Court of first instance dismissed the claim and the lower appellate Court on appeal arrived at the same finding. It held that there was no evidence to show that the respondent Bhoja had any knowledge of the plaintiff's mortgage on the date of the sale, but it further found that a notice was served on Bhoja after the execution of the sale-deed, but before its registration. The lower appellate Court observed further that as there was no evidence to show that the respondent Bhoja had notice on the date he got the sale-deed executed, he was not bound to pay the amount of the mortgage. In appeal it is contended before me that the respondent Bhoja having received notice of the plaintiff's mortgage before the registration of the sale-deed in his favour the said respondent is bound by the same.

The learned vakil for the respondents takes his stand upon the provisions contained in sections 47 and 50 of the Indian Registration Act, and he cites in support of his position the principle laid down in *Hasha v. Ragho Ambo Gondhali* (1). He further drew attention to the case of *Santaya Mangaraya v. Narayan* (2), likewise to the case of *Abdul Majid v. Muhammad Faiz-ullah* (3) and *Baldeo Prasad v. Baldeo* (4). None of these cases cited are exactly in point or on all fours with the present case.

On the other hand the principle laid down by my brother Aikman in *Diwan Singh v. Jadho Singh* (5), which was afterwards restated and affirmed in *Bhikhi Rai v. Udit Narain Singh* (6) is a principle which can without difficulty be extended to the circumstances of the present case. It is true

(1) (1881) I. L. R., 6 Bom., 165.

(2) (1888) I. L. R., 8 Bom., 182.

(3) (1890) I. L. R., 13 All., 89.

(4) Weekly Notes., 1901, p. 112.

(5) (1896) I. L. R., 19 All., 145.

(6) (1903) I. L. R., 25 All., 866.

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that in neither of these the facts are exactly the same as the facts in the present case, but the principle that section 50 of the Indian Registration Act will not avail to the holder of a subsequently registered deed over an earlier deed not compulsorily registrable, if the holder of the registered deed at the time of the registration had notice of the earlier unregistered deed, is one, as I have already said, which can easily be extended to and covers the position of the parties in the case before me. At the time when Bhoja was informed by letter of the plaintiff's mortgage he had ample time to reconsider his position and to refuse to register the deed. He had notice of the previous transaction sufficient to put him on enquiry, and could have ascertained whether in taking the sale-deed he was or was not taking it subject to the incumbrance of 1895. The plea taken in appeal prevails. The appeal is decreed, the decrees of the Courts below are set aside, and as this decision is upon a preliminary point, upon which the Courts below have erred, the case will be returned to the Court below under section 562 of the Code of Civil Procedure with directions to re-admit it on its file of pending cases and dispose of it according to law. Costs here and hitherto will abide the event. *

Appeal decreed and cause remanded.

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March 14.

Before Mr. Justice Richards.

KHAIRATI (DEFENDANT) v. BANNI BEGAM (PLAINTIFF).†
*Act No. IV of 1882 (Transfer of Property Act), section 85—Mortgage—
Suit for sale on a mortgage—Parties.*

Whether or not section 85 of the Transfer of Property Act, 1882, refers solely to persons interested in the equity of redemption, it is not essential to join as a party defendant in a suit for sale on a mortgage a person whose interest in the mortgaged property, if it exists, would be antagonistic to the claims of both mortgagor and mortgagee. *Juggeswar Datt v. Bhuban Mohan Mitra* (1) referred to.

THE facts of this case are as follows :—

The defendant in the suit out of which this appeal arose—
one Khairati—held a mortgage, dated the 10th of December,

* [Cf. also *Tejpal v. Girdhari Lal*, *supra* p. 130—Ed.]

† Second Appeal No. 23 of 1907, from a decree of D. R. Lyle, District Judge of Moradabad, dated the 3rd of December 1906, confirming a decree of Deoki Nandan Sahi, Munsif of Moradabad, dated the 7th of August 1905.