Before Sir Grimwood Mears, Knight, Chief Justice and Mr. Justice Sen.

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July, 15.

ASHIQ HUSAIN AND OTHERS (DEFENDANTS) *v.* CHATAR-BHUJ AND ANOTHER (PLAINTIFFS) AND AHMAD-ULLAH KHAN AND OTHERS (DEFENDANTS).*

Mortgage—Suit for sale—Limitation—"Notice"—Act No. IX of 1908 *(Indian Limitation Act), schedule* 1, *article* 132.

A simple mortgage, executed on the 1st of May, 1909, for a term of three years, contained a stipulation to the effect that, if the mortgagor transferred the mortgaged property, the mortgagee would be at liberty to sue before the expiry of the term. On the 8th of March, 1911, the mortgagor stood surety for one Ali Raza in the amount of Rs. 50, and hypothecated a small share in the property covered by the deed of 1909. No actual notice of this transaction was given to the first mortgagee. A suit was filed on the mortgage of 1909 on the 27th of March, 1924, and the plea of limitation was set up by the defendants.

Held that the suit was within time. No actual notice of the hypothecation of 1911 had been given to the plaintiff mortgagee, and in the circumstances there was no legal duty cast on the mortgagee of 1909 to keep on searching the registers for further dealings of the mortgagor with the property comprised in his mortgage.

Shib Dayal v. *Meharban* (1) and *Pancham* v. *Ansar Husain* (2), followed. *Nathi* v. *Tursi* (3), *Mata Tahal* v. *Bhagwan Singh* (4) and *Gaya Din* v. *Jhumman Lal* (5), referred to.

Meaning of "notice," actual or constructive, discussed. *Barnhart* v. *Greenshields* (6), *Hewitt* v. *Loosemore* (7), *Janki Prasad* v. *Kishen Dat* (8) and *Tilakdhari Lal* v. *Khedan Lal* (9), referred to.

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*First Appeal No. 461 of 1924, from a decree of Ghanshyam Das, Additional Subordinate Judge of Aligarh, dated the 26th of August, 1924.

(1) (1922) I.L.R., 45 All., 27.
(2) (1921) I.L.R., 43 All., 596.
(3) (1921) I.L.R., 43 All., 671.
(4) (1921) 19 A.L.J., 406.
(5) (1915) I.L.R., 37 All., 400.
(6) (1853) 9 Moo., P.C., 18.
(7) (1851) 9 Hare, 449.
(8) (1894) I.L.R., 16 All., 478.
(9) (1920) I.L.R., 48 Calc., 1.

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THE facts of this case are fully stated in the judgement of the Court.

Maulvi *Muhammad Abdul Aziz*, for the appellants.

Babu *Piari Lal Banerji* and Munshi *Benode Behari Lal*, for the respondents.

MEARS, C. J. and SEN, J. :—The action was directed by the respondents, Chaturbhuj and Girdhari Lal, against three sets of defendants under the following circumstances :—

On the 1st of May, 1909, Syed Nazar Husain (now dead), father of the defendants 1—5, executed a simple mortgage in favour of the plaintiffs respondents for Rs. 3,000 with interest at 12 annas per cent. per mensem with half yearly rests. The property mortgaged consisted of a twenty biswa zamindari share in Qasba Amanpur, mahal non-applicants for partition, khewat No. 1, and a two and a half biswa share in mahal Nawazish Ali, khewat No. 3, patti Ram Lal. By a clerical error, the second item of property was described in the mortgage-bond as a $2\frac{1}{2}$ biswa share in mahal Nawazish Ali entered in khewat No. 2, patti Ram Lal.

The document was registered in the office of the Sub-Registrar of tahsil Kasganj, district Etah, on the 3rd of May, 1909.

The mortgagor having died without discharging his liability in whole or in part, the mortgagees brought the present suit against his heirs, the defendants 1—5, for recovery of Rs. 11,154-4.

The defendants 6—12 are the subsequent transferees of portions of the mortgaged property.

The defendants set up various defences which gave rise to no less than ten issues. At a late stage of the suit, the plaintiffs withdrew their claim against defendant No. 12, and the trial proceeded against the remaining

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defendants and eventually a decree was passed in plaintiffs' favour.

The defendants 6—11 have submitted to the decree of the court below. The defendants 1—5, who are the sons of the original mortgagor, have come up in appeal, and it is contended on their behalf that the plaintiffs' claim was time-barred. The other pleas taken in the memorandum of appeal were abandoned.

In order to be able to appreciate the plea of limitation raised by these defendants, it is necessary to examine their written statement with care. In the additional pleas, they say :—

"The plaintiffs' suit is barred by time. The plaintiffs' allegation that the cause of action accrued on the 1st of May, 1912, is totally wrong. The cause of action accrued to the plaintiffs long before that date, and the suit has been instituted long after the accrual of the cause of action."

The terms in which the plea of limitation has been couched are thus as vague as can be, and the court should at once have required the pleader to set out with particularity the circumstances upon which he relied in support of the plea of limitation.

It was not until a late stage of the trial, possibly during the course of argument before the lower court, that the plea of limitation materialized into a more distinct form. The mortgage in suit is dated the 1st of May, 1909. It was payable in three years and the plaintiffs could sue for recovery of the mortgage money within 12 years from the 30th of April, 1912. The suit was launched on the 27th of March, 1924, and was, therefore, within time on that date. The mortgage bond, while providing that the money was payable on the 30th of April, 1912, contained a further stipulation in these terms :

"If I make transfer, etc., of the hypothecated property or if any one gets the same advertised for sale, the creditors shall,

even before the expiry of the term, be at liberty to institute a suit for recovery of the amount of this bond with the entire interest and compound interest for the aforesaid period of 3 years."

On the 8th of March, 1911, Syed Nazar Husain, the mortgagor, stood surety for one Munshi Ali Raza and executed a surety bond in favour of the Secretary of State in Council for a paltry sum of Rs. 50, and hypothecated a one biswa share in mauza Amanpur, mahal Nawazish Ali, entered in khewat as holding No. 3. It is contended before us that Nazar Husain, in breach of his covenant not to transfer the hypothecated property, had, by executing the mortgage bond in favour of the Secretary of State on the 8th of March, 1911, accelerated the cause of action in plaintiffs' favour and the plaintiffs were, therefore, under article 132 of the Indian Limitation Act bound to institute their suit within 12 years from the 8th of March, 1911. The last date of limitation expired on the 8th of March, 1923, and if this contention is right, the suit was time-barred on the 27th of March, 1924.

We have already pointed out above that there was a misdescription in the mortgage bond in suit as regards the second item of the secured property. The defendants appellants in paragraph 3 of the additional pleas contended that the plaintiffs had no power to get any property other than the hypothecated property sold in auction. It was strenuously contended in the trial court that the property mortgaged to the plaintiffs was situate in khewat No. 2 and not in khewat No. 3 and the plaintiffs, therefore, could not enforce their mortgage against the property situate in khewat No. 3. This plea was repelled by the court below and the learned counsel for the appellants has very properly abandoned this plea at the time of argument. The fact however remains that paragraph 3 of the additional pleas was not reconcilable

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with the facts on which the defendants' plea of limitation is founded.

We have been referred to a number of authorities in support of the plea of limitation. In *Pancham* v. *Ansar Husain* (1), two persons borrowed Rs. 5,000 under a mortgage bond on the 21st of February, 1893, and agreed to repay the loan in 12 years. They further stipulated that they would pay annually a sum of Rs. 500 on account of interest, but if in any year they were unable to pay the interest, the interest might be treated as principal. The bond further provided that if there was any default in payment of Rs. 500 per annum, the mortgagee was to have power without waiting for the expiry of the stipulated period to set aside all other stipulations embodied in the document and at once to bring a suit to enforce the mortgage security. It was held by the court that time began to run from the first default in payment of the annual sum of Rs. 500. A similar view was taken in *Nathi* v. *Tursi* (2).

There has been in the past a divergence of judicial opinion on this point both in this Court and the other Indian High Courts. As an illustration of the opposite view we have been referred to *Mata Tahal* v. *Bhagwan Singh* (3), *Girdhari Lal* v. *Gobind Ram* (4), and the view of the minority in *Gaya Din* v. *Jhumman Lal* (5). On the other side of the line are cases like *Ram Das* v. *Muhammad Said Khan* (6). In this case it was held that when there was a covenant to pay the principal sum in 3 years and interest year by year, but the mortgagee was authorized to realize the whole amount of his principal and interest in case of default of the payment of the annual interest, the cause of action for the suit matured in default of payment of interest in the first year. So far

(1) (1921) I.L.R., 43 All., 596.
(2) (1921) I.L.R., 43 All., 671.
(3) (1921) 19 A.L.J., 406.
(4) (1921) 19 A.L.J., 456.
(5) (1915) I.L.R., 37 All., 400.
(6) (1922) 20 A.L.J., 346.

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as this Court is concerned, the conflict of decisions was set at rest by the pronouncement in *Shib Dayal* v. *Meharban* (1), but we are not prepared to extend the principle beyond the limits of decided cases, more especially in view of the warning note sounded by the Privy Council in *Pancham* v. *Ansar Husain* (2).

The noticeable feature in the latter group of cases is that there being default either in the payment of the instalments or in the payment of interest at stated periods, the matter was peculiarly within the knowledge of the mortgagee. He knew that the default had taken place on the part of the mortgagor. He knew that under a distinct stipulation contained in the mortgage bond his money had " become due " and he was bound to sue for his money from the date of the default.

In the present case, however, time is said to begin to run, not by the happening of an event which was peculiarly or at all within the knowledge of the mortgagee, but by reason of the mortgagor executing a hypothecation bond of a small portion of the second item of property. In the normal course of events, the mortgagees could not be expected to know anything about this transaction. The defendants do not allege in their written statement that the mortgagees came to know of this document any time before the institution of the present suit, or how or when they came to know of it. They have led no evidence whatsoever on the point and the learned counsel for the appellants has taken shelter under the plea that the mortgage dated the 8th of March, 1911, was effected by means of a registered instrument and should therefore be held to be constructive notice. It is not pretended that the mortgagees had at any time actual notice of the mortgage dated the 8th of March, 1911. " An actual notice, to constitute a binding notice, must be definite information given by a person interested in the thing in respect of

(1) (1922) I.L.R., 45 All., 27. (2) (1921) I.L.R., 43 All., 596.

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which the notice is issued; for it is a settled rule that a person is not bound to attend to vague rumours or statements by mere strangers, and that a notice to be binding must proceed from some persons interested in the thing" : *Barnhart* v. *Greenshields* (1). It was held in the case of *Hewitt* v. *Loosemore* (2) that constructive notice is knowledge which the court imputes to a person, from the circumstances of the case, upon a legal presumption so strong that it cannot be allowed to be rebutted, that the knowledge must exist though it may not have been formally communicated. Different High Courts have held different views as to whether registration amounts to notice. Our own Court, while answering the question affirmatively, does not lay down any inflexible rule. In *Janki Prasad* v. *Kishen Dat* (3) it has been observed as follows :—

"We do not decide that registration is of itself notice to all the world. All we do decide is, where it is the duty of a person to search, or where a reasonable prudent man would in his own interest make a search, then the fact that the search if made would have disclosed a document affecting the property, affects that man with notice of such a document and puts on him the necessity of further enquiry."

The Judicial Committee in *Tilakdhari Lal* v. *Khedan Lal* (4) has also made a similar pronouncement.

We have no doubt that no legal duty was cast upon the mortgagees on grounds of public policy or on considerations of prudence or business to make a search of the registry. We have no doubt that the transaction dated the 8th of March, 1911, was not in any shape or form brought home to the plaintiffs respondents. We hold, therefore, that the cause of action was not accelerated and the suit is within time.

We dismiss the appeal with costs.

Appeal dismissed.

(1) (1853) 9 Moo., P.C., 18.
(2) (1851) 9 Hare, 449.
(3) (1894) I.L.R., 16 All., 478.
(4) (1920) I.L.R., 48 Calc., 1.