

Before Mr. Justice Bennet and Mr. Justice Iqbal Ahmad.

JUGUL KISHORE (DEFENDANT) *v.* BANWARI LAL
AND OTHERS (PLAINTIFFS).*

1929
June 28.

*Act No. IV of 1882 (Transfer of Property Act), section 55(1)
(g)—Vendor's liability to discharge prior incumbrances—
Sale not specifically made subject to incumbrances—
Vendee's knowledge of incumbrances immaterial.*

Unless there is a specific stipulation in the sale deed that the property is sold subject to incumbrances, the vendor is liable, under the provisions of section 55(1)(g) of the Transfer of Property Act, to pay the incumbrances existing on the property, even if the vendee was aware of their existence. *Bhagwati v. Banarsi Das* (1), referred to.

Messrs. *Peary Lal Banerji* and *Kailas Chandra Mital*, for the appellant.

Dr. *N. C. Vaish* and Mr. *Janaki Prasad*, for the respondents.

BENNET and IQBAL AHMAD, JJ. :—This is a second appeal by the defendant on a very simple point. The defendant bought certain property at an auction-sale on the 20th of December, 1918, for a price which has not been disclosed but is said to be between three and four hundred rupees. The sale proclamation sets out that that property was subject to a prior mortgage of the 28th of June, 1912.

The defendant sold the property to the plaintiff by a sale deed dated the 22nd of June, 1920, in which he stated that he was selling the property which he had purchased at the auction-sale of the 20th of December, 1918. The sale consideration was Rs. 1,000. Subsequently a suit, No. 9 of 1923, was brought by the mortgagee for

*Second Appeal No. 882 of 1926, from a decree of Joti Sarup, Second Subordinate Judge of Saharanpur, dated the 10th of April, 1926, reversing a decree of Sheo Narain Vaish, Munsif of Deoband, dated the 21st of July, 1925.

1929

JUGAL
KISHORE
v.
BANWARI
LAL.

Rs. 2,200 on the mortgage of the 28th of June, 1912, and in that suit the 20th of May, 1925, was fixed for sale. The plaintiff brought the present suit on the 29th of April, 1925, asking for alternative reliefs, either that the defendant might be directed to pay the amount due to the mortgagee or that the defendant might be directed to pay to the plaintiff the sale consideration of Rs. 1,000. The court of first instance dismissed the suit, and the lower appellate court decreed it. The point before this Court is very simple. The Transfer of Property Act, section 55(1) (g) states that the seller is bound, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing. There is no contract in regard to prior incumbrances in the sale deed in question. It was argued by the learned advocate for the appellant that the section quoted means that the vendor is only liable if he stated in the sale deed that he sold free from incumbrances. We cannot agree to this interpretation of the section. It appears to us that the section clearly means what it states, that there must be a provision in the sale deed that the property is sold subject to incumbrances, and if that provision is not specifically set out in the sale deed, then the vendor will be liable for all prior incumbrances. No authority was shown to us for the strange interpretation which the learned advocate for the appellant desired to place on this section. He referred to a ruling of the Privy Council, *Bhagwati v. Banarsi Das* (1), in which in a slightly different case the Privy Council had held that the vendor was liable. The argument apparently was that because the facts of the present case are not precisely similar, therefore in the present case the vendor would not be liable. The argument is obviously unsound. A certain amount of argument was made in regard to the statement in the sale deed that what the vendor sold was what he

(1) (1928) I. L. R., 50 All., 371.

1929

JUGUL
KISHORE
v.
BANWARI
LAL.

had purchased at the auction-sale of the 20th of December, 1918, and it was argued that the vendee should have ascertained what was in the sale proclamation and have referred to the mortgage of the 28th of June, 1912, which is mentioned in the sale proclamation. It was admitted by the learned advocate for the appellant that no copy of the sale proclamation or sale certificate was given to the vendee at the time of the sale to him. A further argument was made that it was open to the vendee to have ascertained by inquiry from the office of the Sub-Registrar that the incumbrances of the 28th of June, 1912, did exist on this property. We consider that even if the vendee had ascertained from this source that incumbrances did exist, still that would be no answer for the provision in section 55(1) (g), which requires that there should be a specific contract set forth in the sale deed that the property is sold subject to incumbrances, otherwise the vendor is liable to pay the incumbrances.

We consider the finding of the lower appellate court is correct and dismiss this appeal with costs.

