

Before Mr. Justice Bennet and Mr. Justice Verma

BALBIR SINGH (APPLICANT) v. SOHAN LAL
(OPPOSITE PARTY)*

1938
December, 7

U. P. Encumbered Estates Act (Local Act XXV of 1934), section 9(1)—Extension of time for presentation of claim by creditor—Extension beyond the period mentioned in the section—Jurisdiction—Fraudulent omission to mention a particular debt—No notice to creditor of that debt—Extension of time by reason of fraud—Limitation Act (IX of 1908), section 18—Registration—Notice.

Where no mention of an existing mortgage debt was made in an application under section 4 of the U. P. Encumbered Estates Act or in the statement filed under section 8, and consequently no notice was sent to the mortgagee, and the notice published in the Government Gazette under section 9 did not come to his knowledge, and more than five months after the publication he came to learn of the proceedings and then applied for the entry of his mortgage debt, and it was found that the omission to mention the debt was deliberate and fraudulent:

Held that, as the creditor had been fraudulently kept out of knowledge of his right to apply for the entry of his debt, section 18 of the Limitation Act came into operation and therefore the court had jurisdiction to extend the time for making such application beyond the two months' maximum extension provided by section 9(1) of the U. P. Encumbered Estates Act.

Held, also, that a purchaser of immovable property must, in the absence of satisfactory evidence to the contrary, be imputed with the knowledge of a registered deed of mortgage of the property executed by his vendor within twelve years of the purchase.

Dr. N. P. Asthana, for the appellant.

Mr. S. B. L. Gaur, for the respondent.

BENNET and VERMA, JJ.:—This is a first appeal by certain debtors, Balbir Singh and others, against an order of the Special Judge under the Encumbered Estates Act. The order is one accepting a claim by the opposite party the creditors, Seth Sohan Lal and

*First Appeal No. 143 of 1937, from an order of S. C. Chaturvedi, Special Judge, first grade of Saharanpur, dated the 31st of March, 1937.

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others, for the entry of a debt due to them on a simple mortgage deed of 10th July, 1922, duly registered, which is charged on the property of the applicants. The applicants applied under section 4 of the U. P. Encumbered Estates Act (Act XXV of 1934). Under that section the applicants were bound to state the amount of their debts to the Collector. The applicants did not mention this debt although it was a debt due under a registered mortgage. Under section 8 of the Act the Special Judge called on the applicants to submit a written statement containing under sub-section (1)(a) "full particulars respecting the public and private debts to which the landlord is subject, or with which his immovable property or any part thereof is encumbered." The mortgage debt in question is for Rs.1,395 and is charged on the whole village of Hajipur. Again the applicants omitted to mention this debt. The result of this omission was that when the Special Judge took proceedings by notice under section 9, he did not send a copy of the notice by registered post to the creditors respondents and they received no notice. No doubt notice was published in the Gazette under sub-section (1) of section 9, but, as might easily have been, such notice did not come to the knowledge of the respondents. Section 9, sub-section (1) allows a period of three months for presentation of the claim and if the claimant satisfies the Special Judge that he had sufficient cause for not presenting it within such period, the Special Judge may extend the period by two months. That period of five months altogether had expired after the publication on 8th August, 1936. After the expiry, on 7th March, 1937, the respondents filed their written statement stating that they were not aware in time of the proceedings as they had received no notice by registered post. The order under appeal of the lower court sets out that in the opinion of the court the applicants committed a fraud and that under section 18 of the Limitation Act

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the time for making the application should be computed from the time when the fraud became known to the persons injuriously affected thereby, that is the respondents.

The appeal has been brought from this order by the applicants on three grounds, the first ground being that the court below had no jurisdiction to extend the period beyond five months, the second ground being that the appellants were purchasers of the property in 1928 free from all incumbrances and were not aware of any debt existing on the property and their application was *bona fide*, and the third ground being similar. Learned counsel has attempted to argue a fourth ground, which is not in the memorandum of appeal, that his client was not given sufficient time for making such an objection. We do not consider that counsel is entitled to raise such ground now.

As regards the grounds entered, we consider that if section 18 of the Limitation Act applies and fraud is established then the court below had clearly jurisdiction under that section. As regards the second ground of appeal, the burden under the circumstances of this case lies on the applicants to show that in their purchase of this village Hajipur on 16th June, 1928, from Prakash Chander and others they were unaware of the previous encumbrance. Learned counsel has alleged that there was a clause in the sale deed setting out that the property was sold free from all encumbrances. Learned counsel after being allowed a considerable time to endeavour to read this document has failed to find any such clause. It is incumbent on counsel to prepare their cases before they come to court and it is not proper that a prolonged period of the Court's time should be taken up by counsel endeavouring to find out a passage in a vernacular document which is on the record. It is the duty of clients to supply certified copies of all necessary documents to their counsel in order that counsel may be aware of the necessary passages in the documents

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before the case is heard in Court. In any case, apart from the possibility of such a clause in the sale deed, we are of opinion that it was clearly natural that a purchaser would have a search made in the office of the sub-registrar to ascertain whether there were or were not any encumbrances on the property. In the present case what was purchased was a whole village and it would have been perfectly easy to ascertain whether there had been a previous mortgage. The mortgage in question was only six years previous to the purchase and it would have been ascertained by a search for encumbrances within the period of 12 years which is usually made. The applicants have not come forward to give evidence that no search was made, nor have the applicants given on oath any explanation as to why they did not enter this encumbrance in their statement to the Collector under section 4 or in the written statement to the Special Judge under section 8. On their behalf learned counsel alleges that they were ignorant of the existence of this mortgage of 1922. It is difficult to believe such statement even if evidence on oath had been given by the applicants in support of it. In the present case there is no such evidence and we are asked to believe the statement on the mere oral argument of counsel. It is not possible for counsel to supply the place of evidence by his argument. We consider that under the circumstances the conclusion of the lower court was correct that the applicants acted in a fraudulent manner and that the applicants knew perfectly well of the existence of this mortgage deed of 1922 as an encumbrance on the village of Hajipur and that the applicants intentionally concealed the existence of that encumbrance in order that the period of five months should elapse without an opportunity being given to the respondents to file their claim. Under these circumstances the order of the court below is perfectly justified and the first appeal from order is dismissed with costs.