APPELLATE CIVIL.

Before Das and Fazl Ali, JJ.

BAICHAND MAHTON

v.

BULAKI SINGH.*

1928.

August, 16.

Constructive notice, doctrine of—sale—another person in possession—subsequent purchaser, duty of, to make enquiry.

Where property not in the possession of the vendor is sold by him, it is the duty of the vendee to make enquiries into the title of the person in possession, and, if the vendee omits to do so, he will be affected with constructive notice of, and will be bound by, all the equities which the party in possession may have in the property.

Hunt v. *Luck*(1), *Daniels* v. *Davison*(2), *Kondiba* v. *Nana Shidrao*(3), *Baburam Bag* v. *Madhab Chandra Pallay*(4), *Magu Brahma* v. *Bholi Das*(5), *Nandi Reddi* v. *Thimmaka*(6) and *Puthempurayil Parkum Chathu Choyichimkandiyal Parkum Poovamulla* v. *Kandiyal Koovan Vengadam Pakkiri*(7), followed.

Haricharan Kuar v. *Kalua Rai*(8), distinguished.

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*Appeal from Appellate Decree no. 734 of 1926, from a decision of M. Saiyid Hasan, Additional Subordinate Judge of Hazaribagh, dated the 5th March, 1926, reversing a decision of Rai Sahib Shiba Priya Chattarji, Munsif of Hazaribagh, dated the 28th July, 1924.

(1) (1902) 1 Ch. D. 428.

(2) (1809) 16 Ves. Jun. 247.

(3) (1903) I. L. R. 27 Bom. 408.

(4) (1913-14) 18 Cal. W. N. 341.

(5) (1913-14) 18 Cal. W. N. 657.

(6) (1914) 22 Ind. Cas. 250.

(7) (1916) 34 Ind. Cas. 906.

(8) (1917) 2 Pat. L. J. 518.

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Appeal by the defendants nos. 2 to 7.

The facts of the case material to this report are stated in the judgment of Fazl Ali, J.

N. N. Sinha and *Bhuneshwari Prasad Sinha*, for the appellants.

B. B. Mukharji and *M. N. Banerji*, for the respondents.

FAZL ALI, J.—This is an appeal by defendants nos. 2 to 7 in a suit for the specific performance of a contract of sale in respect of 8-pies share in village Barkangango in the district of Hazaribagh. The facts of the case are briefly these:

The plaintiffs and defendant no. 1 were both co-sharers in village Barkangango and as the defendant no. 1 used to live abroad he had entered into an arrangement with the plaintiffs by virtue of which the plaintiffs were in possession of the defendant's share in the property and used to deliver to him every year half the produce of the lands. In Jeth 1980 (which corresponds to June, 1923) the defendant no. 1 entered into a contract with the plaintiffs for the sale of his 8-pies share to the plaintiff and the plaintiff paid Rs. 200 by way of earnest money and got a receipt for the amount from him. On the 5th October, 1923, the defendant no. 1 sold his share to the defendants nos. 2 to 7. This gave rise to certain criminal cases and ultimately on the 18th January, 1924, the plaintiffs brought the suit out of which the present appeal arises for the specific performance of the contract of sale between himself and the defendant no. 1.

The learned Munsif, before whom the suit had been brought dismissed it holding that the agreement relied upon had not been proved and the agreement for sale (Exhibit 1) was not genuine. The learned Munsif, however, observed that if he had held that the contract was proved he would have also found that

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the defendants must be affected with constructive notice of the contract inasmuch as the plaintiffs were in actual possession of the disputed lands at the time the kebala was executed in favour of defendants nos. 3 to 7.

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The plaintiffs thereupon appealed and their appeal was allowed by the Subordinate Judge before whom it came up for hearing.

The facts found by the lower appellate Court were that the defendant no. 1 had entered into a vaild contract for the sale of the property to the plaintiffs before he executed the kebala in favour of defendants nos. 2 to 7 and that the plaintiffs were in possession of the property as sajhadars before the defendants nos. 2 to 7 took conveyance in respect of the disputed property. On these facts it was held by the lower appellate Court that the defendants nos. 2 to 7 had constructive notice of the prior agreement in favour of the plaintiff, and in arriving at this conclusion the learned Subordiate Judge approved of the reasoning of the trial Court that the fact that a person other than the vendor was in possession of the property was sufficient to put the purchaser on inquiry as to the nature and extent of the vendor's interest and if that inquiry was not pursued by the purchaser he should be deemed to have constructive notice of the contract entered into by the plaintiff for the purchase of the disputed property.

The only point raised in this appeal on behalf of the appellant was that under the circumstances of the case the Court below should not have held that the appellant had constructive notice of the contract between the plaintiffs and the defendant no. 1. It is said that the plaintiffs being admittedly in possession as sajhadars and this fact being known to the defendants nos. 2 to 7 they had no reason to suspect that the plaintiffs had acquired any other title and it was no business of theirs to direct an inquiry to find out in what capacity they were in possession, because

they knew that the plaintiffs were in possession as sajhadars. It is therefore, contended that it would be stretching the doctrine of constructive notice too far to hold in a case like this that the defendants nos. 2 to 7 were under an obligation to make inquiries from the plaintiffs as to the nature of their possession and to hold that they must be affected with constructive notice merely because they had not made any such inquiry.

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Now, in a long series of English, as well as Indian decisions, it has been laid down that if the property to be sold is not in the possession of the vendor but of another person it is the duty of the purchaser to make inquiries from that person and that he is bound by all the equities which the party in possession may have in the property. In the case of *Hunt* v. *Luck*(1) Vaughan-Williams, L.J. stated the law on the subject as follows: "If a purchaser or a mortgagee had notice that the vendor or mortgagor is not in possession of the property he must make inquiries of the person in possession—of the tenant who is in possession—and find out from him what his rights are. And if he does not choose to do that, then whatever title he acquires as purchaser or mortgagee will be subject to the title or right of the tenant in possession." This doctrine of constructive notice was applied in the case of *Daniels* v. *Davison*(2) under circumstances which are not dissimilar to the circumstances of the present case. In that case the tenant in possession of a public house and garden had entered into a contract for the purchase of the property and his subsequent purchaser was held to have constructive notice of the contract as he was held to have been bound to make inquiry from the tenant which would have led him to a knowledge of it. Lord Eldon while deciding the case observed as follows: "My opinion therefore considering this as depending upon notice is that this tenant being in possession

(1) (1902) 1 Ch. D. 428. (2) (1809) 16 Ves. Jun. 247.

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under a lease with an agreement in his pocket to become the purchaser those circumstances altogether give him an equity repelling the claim of a subsequent purchaser who made no inquiry as to the nature of his possession." It is true that the case of *Daniels* v. *Davison*(1) has been held to be an extreme case beyond which the doctrine of constructive notice ought not to be extended but at the same time it has been followed by the Indian Courts in a number of cases. *Kondiba* v. *Nana Shidrao*(2), *Baburam Bag* v *Madhab Chandra Pallay*(3), *Magu Brahma* v. *Bholi Das*(4), *Nandi Reddi* v. *Thimmakka*(5) and *Puthenpurayil Parkum Chathu Choyichimkandiyal Parkum Poovamulla* v. *Kandiyal Koovan Vengadam Pakkiri*(6). In the case of *Kondiba* v. *Nana Shidrao*(2) the facts were as follows:—

On the 16th June, 1876, one Revapuri mortgaged the lands in suit to the first defendant with possession, and the latter on the 26th June, 1876, leased them to the second defendant for one year. The second defendant remained in possession as tenant after the year had expired. On the 3rd December, 1878, while defendant no. 2 was in possession of the lands as tenant, Revapuri sold to him (defendant no. 2) her equity of redemption. The deed of sale was not compulsorily registrable under the Act then in force, and owing to the death of Revapuri it was not registered. On the 8th December, 1895, the heir of Revapuri sold the equity of redemption in the mortgage of 1876 by a registered deed to the plaintiff. At the date of this sale to the plaintiff the second defendant was still in actual possession. The plaintiff brought this suit to redeem the lands from the mortgagee (defendant no. 1), and added defendant no. 2 as a party alleging that he was in possession as a tenant of the

(1) (1809) 16 Ves. Jun. 247.
(2) (1903) I. L. R. 27 Bom. 408.
(3) (1913-14) 18 Cal. W. N. 341.
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first defendant. The lower Courts passed a decree for the plaintiff, holding that his registered deed gave him priority over the second defendant whose deed was unregistered. It was held in these circumstances that the plaintiff's suit should be dismissed and that possession in certain cases, for the purposes of notice, had the same effect as registration It was further held that the plaintiff at the date of his purchase had notice of the possession of the second defendant, and that being so, it was the plaintiff's duty to inquire of the second defendant under what title he held, and if the plaintiff had done so, instead of assuming that the second defendant was still holding merely as tenant, he would have discovered that the second defendant had purchased the land. In the case of *Magoo Brahma* v. *Balkrishna Das*(1) Mookerjee and Beachhcroft, JJ., disposed of an argument similar to that raised in the present case in the following passage: "In the case before us, the defendants and not the vendors of the plaintiff were admittedly in occupation of the land at the time of the execution of the conveyance in his favour: it was consequently incumbent upon him to enquire under what title the defendants claimed to be in occupation. This he did not do, and in justification of his conduct it has been urged that he was entitled to assume that the defendants were in occupation as tenants, in other words, to assume that as they had entered into possession of the land as tenants, they had not subsequently acquired any other title. In our opinion, this position cannot possibly be supported." In the case of *Puthenpurayil Parkum Chathu Choyichimkandiyal Parkum Poovamulla* v. *Kandiyal Koovan Vengadam Pakhiri*(2) the facts were that the plaintiff was a mortgagee in respect of the disputed property and during the subsistence of the mortgage the mortgagor agreed to sell the property to him but subsequently sold it to other

(1) (1913-14) 18 Cal. W. N. 657. (2) (1916) 34 Ind. Cas. 906.

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persons. The question arose whether the purchasers had notice of the contract of sale and the argument advanced for the appellant was that the appellant was not bound to make any further inquiry and that he was entitled to assume that the plaintiff continued in possession as mortgagee and had not acquired any other title. The learned Judges, who decided this case, overruled this contention relying on the authority of *Daniels* v. *Davison* (1) and certain Indian decisions. On the other hand in *Hari Charan Kuar* v. *Kalu Rai*(2) the Court was asked to apply the doctrine laid down in *Daniels* v. *Davison*(1), but Chamier, C.J., observed as follows. "There appears to be no case in the books in which the Courts have been asked to apply the doctrine of *Daniels* v. *Davison*(1) to a case like the one before us in which the person who had the contract to purchase in his pocket was in possession not of the entire property sold to another but only of a small portion of that property." The distinguishing feature of this case was that the person who relied on the contract to purchase was in possession of only a few plots of land and not the entire property subsequently sold to another person, and under these circumstances it was held that actual notice of the contract not having been proved it would be going too far to hold that mere possession of part of the property amounted to constructive notice of the contract of purchase in respect of a whole property. I have already observed that the facts of the present case bring it well within the rule laid down in *Daniels* v. *Davison* (1) and a number of Indian decisions and so in my opinion the case has been rightly decided by the lower appellate Court and I would dismiss the appeal with costs.

DAS, J.—I agree.

Appeal dismissed.

(1) (1809) 16 Ves. Jun. 247. (2) (1917) 2 Pat. L. J. 513.