

APPELLATE CIVIL.

Before Mr. Justice Dunkley.

R.M.P.A.L. CHETTIAR FIRM

71.

KO MAUNG GALE AND OTHERS.*

1935

Feb. 26.

Estoppel—Mortgagee's acquiescence in sale to others of mortgaged property—Purchase for full value as if property unencumbered—Payment of purchase money to mortgagee—Mortgagee furnishing list of debts due by mortgagor to buyer—Absence in such list of the mortgage—Evidence Act (I of 1872), s. 115.

If a person, either by words or by conduct, has intimated that he consents to an act which has been done, and that he will offer no opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that from which they otherwise might have abstained, he cannot question the legality of the act he has so sanctioned to the prejudice of those who have so given faith to his words, or to the fair inference to be drawn from his conduct. In such cases proof of positive assent or concurrence is not necessary.

Cairncross v. Lorimer, 3 H.L.C. 829; *Munoo Lall v. Choonee Lall*, 1 I.A. 144; *Pickard v. Sears*, 6 A. & E. 469; *Sarat Chunder Dey v. Chunder Laha*, I.L.R. 20 Cal. 296—*followed*.

The appellant's agent acquiesced in the sale to the respondents by the mortgagor's heir of a portion of the property that was mortgaged to the appellant for full value as if it was unencumbered. The purchase money was paid to the appellant's agent who accepted it in reduction of the debt due by the mortgagor, and he also gave the respondents a list of debts due by the mortgagor in which the mortgage in suit was not mentioned.

Held, that by his acts the appellant's agent gave the respondents the impression that he was allowing them to purchase the property free of any claim under the mortgage. The appellant was therefore estopped from setting up that the land sold to the respondents was subject to his mortgage.

N. N. Sen for the appellant.

P. B. Sen for the respondents.

DUNKLEY, J.—The suit out of which this appeal arises was a suit on a registered deed of mortgage

*Special Civil Second Appeal No. 293 of 1934 from the judgment of the District Court of Henzada in Civil Appeal No. 25 of 1934.

brought by the plaintiff-appellant. The respondents were impleaded as defendants in the suit on the ground that they were transferees for value of part of the mortgaged property. They had purchased a portion of the mortgaged land from the wife of the original mortgagor, and it is admitted that they gave full value therefor as if it were unencumbered land. Their main line of defence was that the plaintiff-appellant was estopped from denying that they had purchased the land free from his mortgage, and this is the sole point which has been argued before me in this appeal. The learned District Judge was in error in thinking that section 41 of the Transfer of Property Act had any application to this case, which raises only a question of estoppel by conduct, the general principles of which are enacted in section 115 of the Evidence Act.

In argument before me both sides have relied on the evidence of the pleader U Hla, first witness for the seventh defendant. It is clear from his evidence that the respondents were aware, prior to the purchase of this land, that it was mortgaged to the appellant. U Hla states that on their behalf he spoke to Ko Pan, the sub-agent of the appellant, to "sell" the land to the respondents, and Ko Pan then agreed to sign the deed of sale. Later, when the deed had been drawn up, Ko Pan refused to sign it, and so U Hla went and asked him why he had refused to sign the sale-deed after promising to do so, and he replied "I have nothing to do with Ma Phyu U, why should I sign." Now the original mortgagor was Ma Phyu U's husband, the mortgage deed not being executed by Ma Phyu U herself, and at the time that this sale to the respondents was concluded he was dead, and, therefore, from this statement of Ko Pan it appears that he was

1935

R.M.P.A.L.
CHETTIAR
FIRM
v.
KO MAUNG
GALE.

DUNKLEY, J.

1935
 R.M.P.A.L.
 CHETTIAR
 FIRM
 v
 KO MAUNG
 GALE.
 DUNKLEY, J.

under the impression that Ma Phyu U could not be bound by his mortgage as she had not executed it, and consequently he was not averse to this sale by her to the respondents. When the sale had been concluded the purchase money was not paid to Ma Phyu U, but was actually paid by the first respondent Ko Maung Gale to the appellant's agent. Then the appellant's agent, at the request of U Hla, made out a list of the debts and the balance recoverable from Ma Phyu U, and therein the mortgage-deed now in question was not mentioned. It therefore appears from U Hla's evidence that the appellant's agent raised no objection to the sale of this property for its full value to the respondents, and accepted the whole of the sale proceeds in reduction of the indebtedness of Ma Phyu U and her late husband, and then furnished a list of debts due by Ma Phyu U in which the mortgage now in suit was not mentioned. To my mind, it is clear that by these acts the agent of the appellant gave the respondents the impression that he was prepared to allow them to purchase this land free of any claim under his mortgage, and that they purchased the land on the understanding that they were buying it free from encumbrances.

Now, in the case of *Munoo Lall v. Lalla Choonee Lall and others* (1) their Lordships of the Privy Council held that a person who has represented to an intending purchaser of land that he has not a security over that land, and induced him, under that belief, to buy, cannot as against that purchaser subsequently put his security in force. In *Sarat Chunder Dey and others v. Chunder Laha and others* (2) their Lordships said :

(1) (1873) 1 I.A. 144.

(2) (1892) I.L.R. 20 Cal. 296.

"The law enacted in the Evidence Act, section 115, relating to estoppel as a consequence of declaration, act or omission causing another's belief, and action thereon, does not differ from the English law on that subject, of which the general principle is stated in *Cairncross v. Lorimer* (1). The main question, in determining whether estoppel has been occasioned, is whether the representation has caused the person to whom it has been made to act on the faith of it. The existence of estoppel does not depend on the motive, or on the knowledge of the matter, on the part of the person making the representation. It is not essential that the intention of the person whose declaration, act or omission has induced another to act, or to abstain from acting, should have been fraudulent, or that he should not have been under a mistake, or misapprehension. The word 'intentionally' seems to have been used in section 115 for the purpose of declaring the law as it had been stated to be in judgments in England."

1935
 R.M.P.A.L.
 CHETTIAR
 FIRM
 v.
 KO MAUNG
 GALE.
 DUNKLEY, J.

In the well-known case of *Pickard v. Sears and Barrett* (2) Lord Denman C.J. stated

"But the rule of law is clear, that, where one by his words or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time."

In *Cairncross v. Lorimer* (1) the Lord Chancellor in the course of his speech said :

"I believe, in the laws of all civilised nations, that if a man, either by words or by conduct, has intimated that he consents to an act which has been done, and that he will offer no opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that from which they otherwise might have abstained, he cannot question the legality of the act he had so sanctioned, to the prejudice of those who have so given faith to his words, or to the fair inference to be drawn from his conduct. * * * In such cases proof of positive

(1) 3 H.L.C. 829.

(2) 6 A. & E. 469.

1935

R.M.P.A.L.
 CHEITIAN
 FIRM
 v.
 KO MAUNG
 GALE.
 DUNKLEY, J.

assent or concurrence is not necessary. I am of opinion that, generally speaking, if a party having an interest to prevent an act being done, has full notice of its having been done, and acquiesces in it, so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice, than he would have had if it had been done by his previous license."

Now, it is quite clear in this case that the agent of the appellant acquiesced in the sale of this land by Ma Phyu U to the respondents, and, furthermore, that he ratified that act by accepting the purchase money, and it is clear that it was in consequence of a reasonable belief that he consented to the sale to them free of his mortgage that the respondents purchased the land from Ma Phyu U. The rule of *Cairncross v. Lorimer* (1) is, therefore, clearly applicable to this case, and the appellant firm is now estopped from setting up that the land sold to the respondents is subject to their mortgage. The decision of the learned Judge of the District Court, although based on other grounds than those now stated, was, therefore, correct, and this appeal fails and is dismissed with costs.

(1) 3 H.L.C. 829.