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the part of the petitioners in setting up this will, although the opponents, or, at any rate opponent No. 1, asserted a right to interfere in the administration of the property of the deceased very soon after her death. I think, therefore, there is no sufficient reason to disturb the finding of the lower Court that the will in question had been revoked, and concur in the proposed order.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

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FAKI IBRAHIM WALAD FAKI SHAHABUDIN ARAI (ORIGINAL PLAINTIFF),
APPELLANT v. FAKI GULAM MOHIDIN WALAD FAKI FAJLUDIN ARAI
AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS*.

Notice—Constructive notice—Mortgage with possession—Sale effected in favour of mortgagee who continued in possession—Subsequent sale to a stranger—Second vendee having knowledge of first vendee's possession—No inquiry made as to the nature of possession—Suit by first vendee to get a sale deed executed—Second vendee must be held to have constructive notice of first vendee's title as purchaser.

The plaintiff was in possession of the property as a mortgagee from defendant No. 1. On the 4th March 1917 defendant No. 1 agreed to sell the property to the plaintiff but subsequently refused to execute a sale deed in plaintiff's favour and sold the property to defendant No. 2 by a deed dated the 19th January 1918. The plaintiff, therefore, sued to get a sale deed executed by the defendants. The defendant No. 2 relied upon the sale deed in his favour though he admitted that he knew that the plaintiff was in possession and that he made no inquiry as to the nature of plaintiff's possession. Both the lower Courts dismissed the suit on the ground that the second defendant had no notice actual or constructive of the contract of sale between the first defendant and the plaintiff although defendant No. 2 might be fixed with notice of the plaintiff's possession as mortgagee. In second appeal,

* Second Appeal No. 926 of 1919.

Held, decreeing the suit, that the second defendant having had knowledge of the plaintiff being in possession and having made no inquiry why the plaintiff was in possession, must be taken to have had constructive notice of all the equities in favour of the plaintiff.

Daniels v. Davison⁽¹⁾, relied on.

Sharfudin v. Govind⁽²⁾, referred to.

SECOND appeal against the decision of C. C. Dutt, District Judge of Ratnagiri, confirming the decree passed by Mr. V. S. Nerurkar, Subordinate Judge at Dapoli.

Suit to get a sale deed executed.

Property in suit originally belonged to defendant No. 1. In 1914 it was mortgaged by the defendant to the plaintiff and delivered into his possession. On the 4th March 1917 the defendant agreed to pass a sale deed of the property in plaintiff's favour but subsequently refused to convey the property to him.

On the 19th January 1918 defendant No. 1 sold the property by a registered sale deed to defendant No. 2.

The plaintiff, thereupon, brought a suit to get a sale deed executed by the defendants.

Defendant No. 1 contended that the sale deed of 1918 was fraudulently obtained by defendant No. 2.

Defendant No. 2 pleaded that he was not aware of the agreement made by defendant No. 1 with plaintiff; and that plaintiff could not claim any relief against him as no notice was given to him of the alleged agreement.

The Subordinate Judge held that defendant No. 2 could not be fixed with notice of the plaintiff's alleged purchase though he could be fixed with a notice of plaintiff's possession as mortgagee. He, therefore, dismissed the plaintiff's suit.

(1) (1809) 16 Ves. (Jun.) 249; s. c. [1811] 17 Ves. (Jun.) 433.

(2) (1902) 27 Bom. 452.

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On appeal the District Judge confirmed the decree.

The plaintiff appealed to the High Court.

Tyabji with *D. S. Warde*, for the appellant.

K. H. Kelkar, for respondent No. 2.

MACLEOD, C. J.:—The plaintiff sued to get a sale deed of the plaint property executed, alleging that the defendant No. 1 had agreed to pass a sale deed in his name on the 4th March 1917, but afterwards refused to convey the plaint property to the plaintiff. The 2nd defendant relied upon a sale deed executed by the 1st defendant in his favour on the 19th January 1918. It is admitted that the plaintiff was in possession, and that the 2nd defendant knew that the plaintiff was in possession, and made no inquiry as to the circumstances in which the plaintiff was in possession.

The trial Judge dismissed the suit on the ground that the 2nd defendant had no notice, actual or constructive, of the contract between the 1st defendant and the plaintiff. The plaintiff had been in possession since 1914, and admittedly was a mortgagee. The learned trial Judge seemed to think that although defendant No. 2 might be fixed with notice of the plaintiff's possession as mortgagee, he could not be fixed with the notice of the agreement to sale. In appeal this decision was confirmed. The same distinction was made by the learned appellate Judge, namely, that the constructive notice would only be of the plaintiff's holding as mortgagee and not as a person having an agreement to sell from the 1st defendant.

Now in *Mancharji Sorabji Chulla v. Kongseoo*⁽¹⁾ it was held by Chief Justice Couch that the English authorities on the question were applicable where a person bought an estate of which some one, not the

⁽¹⁾ (1869) 6 Bom. H.C. (O.C.J.) 59.

vendor, had possession. The leading case cited was *Daniels v. Davison*⁽¹⁾ in which the Lord Chancellor held that "where there is a tenant in possession under a lease, or an agreement, a person, purchasing part of the estate, must be bound to inquire, on what terms that person is in possession...that this tenant being in possession 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." That principle has been followed by a Bench of this Court in *Sharfudin v. Govind*⁽²⁾. Mr. Justice Batty said at p. 473: "It appears to be the result of the Bombay decisions that no purchaser can protect himself merely by registering his document of title, against the title of a person in possession of the subject-matter, and if he ignores that possession and fails to make inquiry into its nature and origin, he will be affected by all the equities which the person in possession is proved to have. This being the case, I think that when the plaintiff found that the property of which he bought the equity (of redemption) was in the possession of the defendants, it was for him to inquire into the nature of his vendor's title and the extent of the liabilities to which he was subject." The result, therefore, must be that the 2nd defendant having knowledge of the plaintiff being in possession, and having made no inquiry why the plaintiff was in possession, must be taken to have had constructive notice of all the equities in favour of the plaintiff. It would have been a different matter if he had made inquiries and had been told that the plaintiff was only in possession as mortgagee, but if he chooses to make no inquiries at all, then he is liable to all the risks that might

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⁽¹⁾ (1809) 16 Ves. (Jun.) 249 at p. 254 ; s.g. (1810) 17 Ves. (Jun.) 433.

⁽²⁾ (1902) 27 Bom. 452.

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result from the discovery that the person in possession was entitled to equities against the vendor. The result, therefore, must be that the appeal must be allowed. The plaintiff will be entitled to a conveyance of the suit property from the 2nd defendant who has a registered sale deed from the 1st defendant. The plaintiff will be entitled to his costs throughout.

FAWCETT, J.:—I concur. I would also refer to the 3rd illustration to clause (b) of section 27 of the Specific Relief Act, which authoritatively declares the law in accordance with the case of *Daniels v. Davison*^(a):

“A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.”

Therefore the lower Courts were not justified in making the distinction upon which they dismissed the plaintiff's suit.

Decree reversed.

J. G. R.

^(a) (1809) 16 Ves. (Jun.) 249.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

RAMCHANDRA AVADHUTRAO PATIL (ORIGINAL DEFENDANT No. 3),
 APPELLANT v. TUKARAM BABAJI CHAUGULA AND OTHERS (ORIGINAL
 PLAINTIFFS AND DEFENDANT No. 1), RESPONDENTS^b.

Hindu Law—Partition—Property left undivided at the time of partition—Presumption that there has been a complete partition both as to parties and property—Members hold the family property as tenants-in-common—Fact that a portion of family property is held by them as joint tenants must be proved like any other fact.

^b Second Appeal No. 153 of 1919.

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