Babasah Vs. Hajee Mahomed Akbar Sahib and ors.

LegalCrystal Citation : legalcrystal.com/778211

Court : Chennai

Decided On : Jan-10-1923

Reported in : (1923)45MLJ157

Appellant : Babasah

Respondent : Hajee Mahomed Akbar Sahib and ors.

Judgement :

Wallace, J.

1. The substantive point for decision in C.C.C.A. No. 29 of 1921 is, whether on the date of his purchase under Ex. IV appellant (4th defendant) had notice of the prior agreement by 1st defendant to sell the same property to the plaintiff. Plaintiff owns the superstructure on the land bought by appellant under Ex. IV from defendants 2 and 3, who in their turn had bought under Ex. III from 1st defendant. It is not disputed that plaintiff held an agreement prior to both Exs. III and IV from 1st defendant to sell the land to him.

2. Appellant admitted in evidence that at the time of his purchase he learnt from Ex. III that the superstructure belonged to plaintiff, and that he made no enquiry of plaintiff under what right he occupied the land. It appears that he made no enquiries, whatever, either from his vendors, (e.g. whether they were receiving the ground rent from anyone), or from 1st defendant their vendor, or from plaintiff, or from the sub-tenants actually in occupation of the superstructure under plaintiff. Such utter absence of reasonable enquiry is either wilful or grossly negligent.

3. The general principle of constructive notice in such a case is that notice of occupation (of the property purchased) by a person other than the vendor, which indicates that the vendor is not entitled to present possession, at once puts the purchaser on enquiry as to the interest that occupier holds in the property. The usual case is where the property is physically occupied by tenants, and then the purchaser is, by that occupation itself which puts him on enquiry, in law affected with notice of the interest which these tenants have in the property. He is by their occupation not affected with notice of more than the terms on which they hold Including any agreement collateral to their leases, but he is not bound to enquire, nor are they bound to answer, to whom they pay rent, so that the purchaser is not in such a case affected with notice of the tenant's lessor's title or rights. This is the general principle laid down in a series of English cases from Daniels v. Davison (1809) 16 Ves. 249 onwards, succintly dealt with in Hunt v. Luck (1901) 1 Ch. 45. The principle has been embodied in India in Section 27 of the Specific Relief Act and Section 3 of the Transfer of Property Act.

4. So that where nothing more is known to the purchaser, or would be known to him on reasonable enquiry, than the fact that certain tenants are in occupation under a tenant right, he is not affected with notice of more than the facts as to those tenant's rights. But when beyond this, the purchaser is directly informed and therefore knows of the occupation of the property by another whether by himself or by his subtenants, he is equally put upon notice to enquire into the interest of that other. This is no extension of the principle above mentioned, but a mere application of it. It makes no difference in principle whether the occupation by another is brought to his notice by physical occupation or by direct information. Where then the purchaser is definitely informed that an other is in occupation of the property - whether himself directly or through sub-tenants does not matter - he is at once put on enquiry as to the nature of the interest of that other in the property. This application of the general principle is clearly set out in Hunt v. Luck quoted above and. has been followed in India in Faki Ibrahim v. Faki Gulam I.L.R. 45 B. 910. The absence of such enquiry will fasten the purchaser with all the equities which the occupier holds against the purchaser's vendor.

5. Now in the present case, appellant knew - and apparently knew nothing more than - that plaintiff was the owner of the superstructure, and appellant does not say whether he knew that plaintiff was not occupying it himself. With such knowledge it was incumbent on him to enquire into the nature of the interest held by plaintiff, and, if he wilfully abstained, as he did, from making any enquiry, or was grossly negligent as he was, in making enquiry, he will be, in law, affected with notice of any fact which he would have come to know had he made such enquiry. Such an enquiry would have told him that plaintiff was a tenant under 1st defendant, and would also, as soon as he enquired, the period of plaintiff's interest in the land, i.e., the period of tenancy, as he was also bound to do, have informed him that the tenancy was to come to an end as soon as 1st defendant executed and registered the deed of sale of the land which he had agreed to sell to plaintiff. We must therefore hold that the appellant wilfully abstained from, or grossly neglected to make, an enquiry which would have informed him of the prior agreement by 1st defendant to sell the land to plaintiff which precluded 1st defendant from selling it to his (appellant's vendors, and that appellant had in law constructive notice of that fact. Plaintiff is entitled then and has an equity, to repel the claim of the appellant, who made no enquiry as to the nature of his possession. Where appellant made no enquiry at all, he is taken to have had constructive notice of all the equities in favour of plaintiff. The fact that his immediate vendor was not 1st defendant, but purchasers from 1st defendant, does not affect this question of notice.

6. Appellant then, though possibly a purchaser in good faith, was a purchaser with notice of the contract to sell of which plaintiff now seeks specific performance, and cannot therefore, vide Section 27 Specific Relief Act, resist the plaintiff's suit.

7. We therefore agree with the lower Court's decision, though the reasons given by it are hardly adequate. It follows that this appeal must be dismissed and we dismiss it with costs to plaintiff and half costs to 1st defendant, payable by appellant. The defendants 1 to 4 will within one month from today execute the conveyance directed by the decree of the lower Court regarding the land in Schedule A, and on execution thereof Rs. 1,000 now in deposit in the lower Court will be paid out to 4th defendant.

8. C.C.C. Appeal Nos. 30, 33 and 34 of 1921.

9. C.C.C.A. No. 30 of 1921 follows No. 29 of 1921 and is dismissed with costs (excluding Vakil's fee) C.C.C. As 33 and 34 of 1921 are not pressed before us and are dismissed with costs to 4th defendant and half costs to 1st defendant (in C.C.C.A. 33 of 1921) payable by appellant. (One Vakil's fee for both).