(1912) 02 AHC CK 0050

In the Allahabad High Court

Adanki Teli and Others APPELLANT

Vs

Motichand and Others RESPONDENT

Date of Decision : 12-02-1912

Acts Referred:

Citation : 16 Ind. Cas. 102

Hon'ble Judges : Henry Richards, C.J;Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit in which the plaintiffs sought a declaration that certain sale-deeds and leases were void as against them. One Kesho Das had two mortgages, comprising a large amount of property and including the property which was the subject-matter of the sale-deeds and leases impugned. Kesho Dass obtained decrees in 1898 on foot of his mortgages. In September 1905, the mortgagors sold the property to the plaintiffs, or their predecessors-in-title, for Rs. 72,000 and odd. Out of this purchase-money, Rs. 42,000 and odd went to discharge the mortgage-decrees of Kesho Das and a third mortgage and the balance, amounting to some Rs. 28,000, was paid over to the vendors of the plaintiffs. It would appear that the property, prior to the purchase, had been proclaimed for sale in execution of Kesho Das''s decrees and sanction was obtained, u/s 309 of the Code of Civil Procedure, 1882, for a private transfer of the judgment-debtor''s property. Between the date of the decrees but prior to the sale to the plaintiffs, the sale-deeds and leases in dispute were executed. There is nothing whatever on the record to show that there was any fraud on the part of the vendees and lessees in these deeds. Most of them were made long prior to the purchase by the plaintiffs. The first was a sale-deed of two-thirds of a grove, the date of the sale being the 21st of July 1902. The vendors under this deed merely took a right to the trees and their produce. They took no right in the land, and they had to pay ground rent for the land. The consideration for this sale was only Rs. 380. The second deed of sale was dated the 20th of July 1904.

This was a very trivial transaction relating to four trees for which the vendees paid Rs. 50. The terms of the sale were similar to those in the case of the first sale, the vendees not acquiring any right to the land itself but merely the right to the trees and their produce so long as the former existed. The first lease was dated the 30th of August 1901. It is true the lease was a perpetual one, but the rent was increased from an old rent of Rs. 14 to a new rent of Rs. 23-5-3.

2. The lease appears to have been a perfectly genuine transaction and was probably the best way of dealing with the land. At that time, the mortgagors had a very substantial interest left in the property. The second lease was dated the 27th of September 1902. The rent in this case was only Rs. 60. The appellant says that this was also an increase of rent because prior to the making of the lease, a rent of Rs. 720 was reserved for a holding, which comprised the land, the subject of the lease, and considerable additional pro-party. This has not been very clearly shown. At the same time, we have no reason for thinking that this transaction was anything else bat a genuine transaction, made by an owner in the ordinary management of his estate. With regard to the third lease, the lessees have not appealed and we are not concerned with it. The fourth lease was dated the 29th of July 1904. The old rent was Rs. 40-7. The new rent is Rs. 40-1-3. The rent is, therefore, practically the same, and it would appear that the lessee had been an occupancy-tenant. Under these circumstances, the learned Subordinate Judge decreed the plaintiff''s claim holding that, inasmuch as the plaintiffs had acquired the rights of the prior mortgagees, the leases and the sales were void against them. We think the decision was wrong. By the sale, the plaintiffs acquired the right of the prior mortgagees to the extent of their mortgages. They also acquired such right as the mortgagors had left in them at the date of the sale. But at the date of the sale, the mortgagors had already made the partial alienations to which we have referred in favour of appellants, and it is clear that the interest which the plaintiffs acquired save to the extent of the mortgages, must be deemed subsequent to these partial alienations. The purchase-money was more than sufficient to discharge the decrees and left a very substantial balance far exceeding the value of the property transferred to the defendant to be paid over to the plaintiffs'' vendors. Furthermore, it would appear that all these transactions were registered transactions, and the plaintiffs must be deemed to have purchased the property with notice. The sale-deed itself makes provision for compensation to the purchasers in the event of the vendors having made any false representation as to the state of the property. The plaintiffs are not entitled, in our opinion, to question the validity of the transfers made to the defendants.

3. We allow the appeal, and vary the decree of the Court below by dismissing the claim as against the appellants with costs in both Courts.

