

(1887) 02 AHC CK 0003
In the Allahabad High Court

Gheran

APPELLANT

Vs

Kunj Behari and Others

RESPONDENT

Date of Decision : 02-02-1887

Acts Referred:

Citation : (1887) ILR (All) 413

Hon'ble Judges : John Edge, J;Brodhurst, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Edge, Kt., C.J.—In this case the plaintiff, under a decree against three out of four brothers brought to sale a 1 anna and 1 7/8 pies share, which was the share of those three brothers in a 1 anna 6 1/2 pies share which belonged to those three brothers, and the fourth. On the 20th January 1880, the plaintiff purchased at the auction-sale the 1 anna and 1 7/8 pies share. Subsequently, another person obtained a decree against all the four brothers, and under that decree he got execution against the property of the four brothers. The 20th April 1880, was the day fixed for the sale of the 1 anna 6 1/2 pies share under the latter decree. On the 20th April 1880, this subsequent decree-holder made an application to the officer conducting the sale, requesting him to sell only a 4 5/8 pies share, which was the share of the fourth brother, whose interest had not been already sold to the plaintiff, stating also in that application the fact of the previous sale of the 1 anna and 1 7/8 pies share to the plaintiff. The officer conducting the sale ordered that application to be filed, being of opinion that he could not comply with the request or order of the decree-holder, but was bound to execute the decree which had come to him, and he proceeded to sell the 1 anna and 6 1/2 pies share. The plaintiff who was present, on that made a bid for the 1 anna and 6 1/2 pies share. Ultimately, however, the officer conducting the sale, finding, I assume, that sufficient money would be realized by the sale of a 1 anna share, withdrew the 6 1/2 pies, and put only a 1 anna share up for sale. After that the plaintiff did not bid. That 1 anna share was purchased by the

predecessor in title of the defendants in this action. That purchaser subsequently dealt with this 1 anna share, and any interest which he obtained became vested in the defendants.

3. Now, under these circumstances, the plaintiff has brought his action for a declaration that his 1 anna and If pies share was not affected by the auction sale of the 20th April 1880. The Lower Appellate Court has found in favour of the defendants, its finding being, in effect, that the plaintiff had given bids, and had concealed the fact of his purchase; and then, after giving some of the facts of the case, he says: "The rule of estoppel will, in a case like this, operate as between the plaintiff and the subsequent auction-purchaser, and not as between the plaintiff and the decree-holder. The purchaser at the second sale in the execution of decree, who purchased the share in good faith and in ignorance of the first sale, and who was led to believe from the plaintiff's act or omission that there was no risk in purchasing the property, cannot be deprived of his right in consequence of the plaintiff's present action." I have no hesitation in saying that there is no evidence on the record at least none has been brought to our notice--to support any one of those conclusions to which the Lower Appellate Court has arrived.

4. It is contended here, in the first instance, that this is a case which falls within Section 115 of the Indian Evidence Act, and that an estoppel arises in this case. That section provides that "when a person has by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief," he shall not subsequently deny the truth of that thing. Now, in order to bring this case within that section, it would be material that there should be evidence that the plaintiff by bidding at the sale in which the decree-holder had already given a notice that a portion of the property had previously been purchased by the plaintiff, intentionally permitted or caused another person to assume that the plaintiff had no title in the property. Of any such intention I can see no possible evidence. The intention of the plaintiff in bidding must have been this, that as notice had already been given of the previous sale of a greater portion of the property to him, very few persons were likely to purchase it, and so he would acquire the whole of this property in which he had already purchased an interest, and get it cheap. I cannot conceive that by bidding he meant to show that he had no title to the property. I put that point to Mr. Juala Prasad, one of the learned pleaders for the respondents, and he very candidly admitted that the predecessor in title of his clients must have known of the objection raised to the sale by the decree-holder and of the previous purchase by the plaintiff. But he contends that the subsequent conduct of the plaintiff in bidding misled the purchaser, who thought the plaintiff had waived his title. I, however, cannot agree with that contention. This not being, therefore, a case u/s 115 of the Indian Evidence Act, is there any other authority to show that an estoppel arises in this case? Mr. Sukh Ram, on behalf of the respondents, has cited three of four cases, of which the first is *Rai Seeta Ram v. Kishun Dass* N.W. P. H. C. Rep. 1868 . 402. In that case the plaintiff actually was the person

who had negotiated the loan, and had actively concealed from the defendant, who was advancing money on the security of the property, the fact that he, the plaintiff, had a lien upon the property. That is a very different case. There a fraud was perpetrated upon the defendant, the lender of the money, and the plaintiff there would have obtained the benefit of the fraud if he had been allowed to say that he had a good prior subsisting lien.

5. The next case is that of *McConnell v. Mayer*, N.W. P. H. C. Rep. 1870 315. In that case it was very rightly held that when a person who claimed an interest in the property which has been sold, upon inquiry by the intending purchaser, gave an evasive answer, he could not afterwards be allowed to say that he had such interest. This evasive answer was in effect a deliberate falsehood, which misled the purchaser.

6. The next case is that of *Agrawal Singh v. Foujdar Singh* 8 Cal. L. R. 346. It is only an authority to show that a man may so act as to make evidence against himself. It does not say that what was so done would create an estoppel.

7. The next case is that of *E. Solano v. Ram Lall* 7 Cal. L. R. 481. That is a case very dissimilar to the present case. In that case the defendant had previously become the purchaser of an interest in the property, and subsequently he obtained a decree against the person, a portion of whose interest in the property he had previously purchased, and he put up to sale the whole property without mentioning that he had previously purchased a portion of it. There also was a direct representation by the vendor in execution that the whole was being sold without any incumbrance.

8. The only other authority is the statement in paragraph 385 of Story's *Equity Jurisprudence*, Vol. I, that "in many cases a man may innocently be silent, for, as has often been observed, *aliud est tacere, aliud celare*. But in other cases, a man is bound to speak out, and his very silence becomes as expressive as if he had openly consented to what is said or done, and had become a party to the transaction. Thus, if a man, having a title to an estate, which is offered for sale, and knowing his title stands by and encourages the sale, or does not forbid it, and thereby another person is induced to purchase the estate, under the supposition that the title is good, the former so standing by, and being silent, will be bound by the sale, and neither he nor his privies will be at liberty to dispute the validity of the purchase." In that case it says--if a man stands by and encourages the sale. The plaintiff in this case did nothing of the kind. There was already a notice showing what title the judgment-debtors really had in the property. It cannot be said that by bidding the plaintiff encouraged another person to purchase. I cannot see what necessity there was for the plaintiff to forbid the sale. He had no power to forbid the sale, and the decree-holder who had power, had already forbidden it. Under these circumstances I am of opinion that no case of estoppel has been made out here.

9. There is only one other point to be considered. Mr. Sukh Ram asks us to

remand this case for the decision of a certain issue. He alleges that the decree under which his client's predecessor in title purchased, although subsequent to the plaintiff's decree, was in respect of a debt incurred by the father of the judgment-debtors who were living as a joint Hindu family, and he says that that decree therefore, by reason of its being in respect of a prior debt incurred by the father, took precedence over the decree under which the plaintiff purchased, which was in respect of a debt incurred by the sons after the father's death. I have asked him for any authority for such a proposition, and he has not shown any. My belief is that a decree takes priority in respect of the date on which it was passed, and does not depend upon the priority of the debt. I decline therefore to remand this case. For the above reasons the appeal is allowed, the decision of the Lower Appellate Court is reversed, and that of the Court of First Instance is restored and confirmed with costs.

Brodhurst, J.

10. I concur.